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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship and Immigration Services

PUBLIC COPY



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DATE: MAY 01 2012

Office: NEBRASKA SERVICE CENTER FILE:



IN RE:

Petitioner:



Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is an IT services firm. It seeks to employ the beneficiary permanently in the United States as a senior systems analyst. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not established that the beneficiary possessed the educational credentials required by the terms of the labor certification and denied the petition, accordingly.

On appeal and in response to the AAO's request for evidence, the petitioner, through counsel, submits additional evidence and contends that the beneficiary's credentials satisfied the terms of the ETA Form 9089 and that the petition should be approved.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).¹

¹Section 203(b) of the Immigration and Nationality Act (the Act) states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability.--

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date which is the day the ETA Form 9089 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on September 11, 2006, which establishes the priority date. The Immigrant Petition for Alien Worker (Form I-140) was filed on October 10, 2006.

The petitioner seeks visa classification of the beneficiary as a second preference advanced degree professional. The petitioner asserts that the beneficiary has a foreign equivalent degree followed by at least five years of progressive experience. Part H of the ETA Form 9089 states that the required bachelor's degree must have a major field of study in "IT, Business, Marketing, or related." The ETA Form 9089 also requires five years of experience in the position offered as a senior systems analyst.²

The sole issue on appeal is whether the beneficiary's Bachelor's degree in Economics should be considered to be a foreign equivalent degree in a related major such that it satisfies the educational requirements of the ETA Form 9089. The AAO issued a request for evidence on February 14, 2012, which asked the petitioner to submit recruitment materials that would demonstrate its intent as to the actual minimum requirements of the offered position. This was solicited in order to determine whether otherwise available qualified U.S. workers with related fields of study were put on notice that they were eligible to apply for the position.

Following a review of the petitioner's response, which included published job advertisements explicitly stating the petitioner's willingness to accept a wide range of majors, the AAO finds that in this case, the petitioner has established that the beneficiary's Bachelor's degree in Economics may be considered to be a related major field of study as required by the ETA Form 9089.³

²The job duties of a senior systems analyst are set forth on Part H.11 of the ETA Form 9089. The job duties are described as follows:

Analyze and test the incorporation of technical changes and instructions to be able to use the specially designed software on a different type of computer system and in a foreign site design, web user interface, internal production tools and database design. Review computer system capabilities, workflow, and scheduling limitations, procedures for accomplishing project, staffing requirements, and allotment of available resources to various phases of project.

³ It is undisputed that the beneficiary has a foreign equivalent degree to a U.S. baccalaureate. The beneficiary completed a Bachelor's degree in Economics in March 1996 at Musashi University, Japan. The petitioner submitted a credential evaluation in support, which determined that the beneficiary's bachelor's degree alone was the foreign equivalent to a U.S. bachelor's degree. The AAO has also reviewed the Electronic Database for Global Education

Therefore, the petitioner has established that the beneficiary has the educational credentials required by the terms of the labor certification as he may be deemed to possess a Bachelor's degree in a related major field of study as set forth on the ETA Form 9089.

Based on the foregoing, the director's decision will be withdrawn, and the petition will be approved as a member of the professions holding an advanced degree pursuant to Section 203(b) of the Act.

The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The appeal is sustained. The petition is approved.

(EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://aacraoedge.aacrao.org/register/>. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies. In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision; see also *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010); and *Sunshine Rehab Services, Inc.*, 2010 WL 3325442 (E.D.Mich. August 20, 2010). According to EDGE, a Bachelor's degree in Japan represents "the attainment of a level of education comparable to a bachelor's degree in the United States."