

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

(b)(6)

Date: **MAY 14 2013**

Office: TEXAS 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,

A handwritten signature in black ink, appearing to be "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition and dismissed the subsequent motion to reconsider the decision. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the matter will be remanded for further consideration and a new decision.

The petitioner describes itself as a telecommunications company. It seeks to employ the beneficiary permanently in the United States as a database developer. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the U.S. Department of Labor (DOL). The priority date of the petition is July 26, 2010, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

The appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

At issue on appeal is whether the beneficiary possessed the minimum education stated on the labor certification and required by the requested advanced degree professional classification.

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees 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 that 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.” *Id.*

In addition to meeting the requirements for the requested classification, the petitioner must also establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977).

¹ The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's degree in computer science.
- H.5. Training: None required.
- H.6. Experience in the job offered: 60 months.
- H.7. Alternate field of study: Mechanical engineering.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: Systems and/or Database Administrator.
- H.14. Specific skills or other requirements: "5 yrs of technical experience in IT, database productivity tools Sql*Plus, Oracle Loader, TOAD, SQL, Navigator, PLSSQL Developer, Oracle Applications Manager (OAM), Oracle Enterprise Manager (OEM), database design & implementation, & Oracle ERP applications."

The record contains a copy of the diploma and transcripts from the beneficiary's Bachelor of Technology in Mechanical Engineering from [REDACTED] India.² The degree was issued after three years of study. The record also contains a copy of the diploma and transcripts for the beneficiary's three-year Diploma in Mechanical Engineering from [REDACTED] India.

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See <http://edge.aacrao.org/info.php>. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.³ 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.⁴

² [REDACTED] is recognized by India's University Grants Commission. See <http://www.ugc.ac.in/oldpdf/alluniversity.pdf> (last accessed March 21, 2013).

³ See *An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

⁴ 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

According to EDGE, a Bachelor of Technology degree from India is “[a]warded upon completion of four years of tertiary study beyond the Higher Secondary Certificate (or equivalent) [and] represents attainment of a level of education comparable to a bachelor’s degree in the United States.”

The director’s decision denying the petition and dismissing the subsequent motion focused on the fact that the beneficiary completed his Bachelor of Technology degree in three years. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg’l Comm’r 1977).

As is noted above, prior to initiating his Bachelor of Technology degree, the beneficiary completed a three-year Diploma in Mechanical Engineering at [REDACTED]. According to EDGE, a Diploma in Engineering from India is “[a]warded upon completion of three years of study beyond the Secondary School Certificate [and is] comparable to up to one year of university study in the United States.” EDGE also notes that undergraduate credit is taken from the final year of the three-year diploma program. The record also contains a letter from the registrar of [REDACTED] which states that candidates such as the beneficiary were eligible to complete a Bachelor of Technology in three years if they possessed a Diploma in Engineering because of the common courses between the two degrees.

Therefore, it is concluded that the beneficiary’s Bachelor of Technology degree is the foreign equivalent of a U.S. bachelor’s degree. The instant case does not involve a combination of two lesser degrees. The Bachelor of Technology degree is sequential to and builds upon the Diploma in Engineering. The director’s decision on this issue is withdrawn.

However, beyond the decision of the director, the petitioner has not established that the beneficiary possessed all of the required experience and specific skills for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977)

As is noted above, the labor certification in the instant case states that the offered position requires

AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

five years of experience in the job offered or as a Systems and/or Database Administrator and five years of experience with a list of specific programs and duties.

The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(g)(1). The record contains a letter from [REDACTED] stating that the beneficiary worked for the company as a database administrator from November 10, 2005 until July 17, 2006, a period of less than one year. The record also contains an affidavit from a former coworker of the beneficiary, testifying that the beneficiary was employed by [REDACTED] from January 1999 until November 2005 as a Senior Systems Specialist. The beneficiary relies on the affidavit to satisfy the experience and specific skills requirements of the labor certification. However, an affidavit from a coworker does not meet the requirements for an employer letter set forth in the regulations. Consequently, evidence in the record does not establish that the beneficiary possessed all of the required experience and specific skills set forth on the labor certification by the priority date. Therefore, the petitioner has not established that the beneficiary is qualified for the offered position and the requested advanced degree professional preference classification.

Also beyond the decision of the director, the petitioner has not established its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence. *See* 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay "shall be in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.* If the petitioner employs over 100 workers, USCIS "may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage." *Id.*

The record contains the 2009 annual report of [REDACTED]. The petitioner and [REDACTED] are separate corporate entities, and the petitioner's financial information is not separately stated on the annual report. The petitioner cannot establish its ability to pay based on the annual report of another corporation, even if the other corporation is a parent, subsidiary or affiliate. Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm'r 1980). In *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003), the court stated that "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage." It is also noted that the annual report predates that priority date of the petition.

The record does not contain a financial officer letter or annual reports, federal tax returns, or audited financial statements establishing the petitioner's ability to pay the proffered wage. While additional evidence may be submitted to establish the petitioner's ability to pay the proffered wage, it may not be substituted for evidence required by regulation. Accordingly, the evidence in the record does not establish that the petitioner has had the continuing ability to pay the proffered wage to the beneficiary since the priority date.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issues stated above. The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn; however, the petition is currently not approvable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision.