



**U.S. Citizenship
and Immigration
Services**

(b)(6)

DATE: **NOV 21 2013**

OFFICE: TEXAS SERVICE CENTER

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (the director), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a software and business consulting firm. It seeks to permanently employ the beneficiary in the United States as a financial business analyst. 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).

At issue in this case is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).¹ The priority date of the petition is May 12, 2011.²

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's degree in Financial Management, MIS, Math, Computer Science or Engineering.
- H.5. Training: None required.
- H.6. Experience in the job offered: 12 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: All candidates should possess a master's degree in Financial Management, MIS, Math, Computer Science or Engineering and at least one year experience in the job offered due to theoretical and computational complexities involved in the job for which the labor certification is sought. All candidates should be willing to relocate, at employer's expense, to the client sites nationwide.

Part J of the labor certification states that the beneficiary possesses a Master of Financial Management degree from [REDACTED] completed in 2000. The record contains a copy of the beneficiary's Bachelor of Commerce degree from [REDACTED] completed in 1998 and a Master of Financial Management degree from [REDACTED]

¹ See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

² The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

completed in 2000.

The record contains an evaluation of the beneficiary's educational credentials prepared by on February 28, 2006 and an expert opinion letter signed by on April 8, 2013.

Part K of the labor certification states that the beneficiary is qualified for the offered position based on experience as a financial analyst with from October 3, 2000 to December 31, 2002; a finance executive with from January 9, 2003 to July 31, 2003; an associate manager/financial business analyst with from August 1, 2003 to October 31, 2006; a financial business analyst/manager finance with in New York, from November 1, 2006 to July 31, 2010; and as a financial business analyst with the petitioner from August 1, 2010 until May 12, 2011.

The record contains an experience letter, dated December 15, 2010, from executive director (administration) and partner, on indicating that the company employed the beneficiary as a senior business analyst with the company from August 2003 to July 2010. The record also contains an undated experience letter from an unknown individual on letterhead stating that the company employed the beneficiary from October 10, 2000 to December 31, 2002.

The director's decision denying the petition concludes that the beneficiary does not possess the minimum requirements of the labor certification, a master's degree in financial management, MIS, math, computer science or engineering and 12 months of experience in the job offered.

On appeal, the petitioner challenges the director's finding that the beneficiary does not possess the minimum requirements for the proffered position.

The petitioner's appeal is properly filed, timely and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.³ The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.⁴ A petition that

³ See 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

⁴ 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).

fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision.⁵

II. LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).⁶ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

⁵ *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

⁶ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

Eligibility for the Classification Sought

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. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. See 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

When the beneficiary relies on a bachelor's degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the legacy INS responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990) and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a

bachelor's degree rather than a "foreign equivalent degree."⁷ In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" of a United States baccalaureate degree. See 8 C.F.R. § 204.5(k)(2).

The beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. See *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received from a college or university, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).⁸

A three-year bachelor's degree will generally not be considered to be the "foreign equivalent" of a United States baccalaureate degree. See *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).⁹ See *Maranjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree); see also *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010) (the beneficiary's three-year bachelor's degree was not the foreign equivalent of a U.S. bachelor's degree).

In the instant case, the petitioner relies on the beneficiary's bachelor of commerce and master of

⁷ Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

⁸ Compare 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

⁹ In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

financial management degrees from [REDACTED] as being the foreign equivalent of a U.S. Master's degree.

The educational credentials prepared by [REDACTED] on February 28, 2006 states that the beneficiary's bachelor of commerce degree is equivalent to the completion of three years of academic studies toward a Bachelor's degree at an accredited U.S. college or university, and his completion of a master's program in financial management subsequent to completion of the bachelor's program fulfilled the requirements for the equivalent of a Master of Science degree in financial management from an accredited U.S. college or university.¹⁰

The expert opinion letter signed by [REDACTED] on April 8, 2013, states that the beneficiary's master's degree in financial management required completion of a three-year bachelor's degree for admission. [REDACTED] concludes that the beneficiary's completion of a two-year Master of Financial Management program is comparable to a Master of Science degree in financial management from an accredited U.S. college or university.

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>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.¹¹

¹⁰ USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

¹¹ In *Confluence International, 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. 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 beneficiary's

According to EDGE, a three-year Bachelor of Commerce degree from India is comparable to "two or three years of university study in the United States" and a Master of Commerce degree is comparable to a Bachelor's degree in the United States.

On August 26, 2013, the AAO issued a Notice of Intent to Dismiss (NOID) indicating that the evidence in the record did not establish that the beneficiary possesses the education required for classification as an advanced degree professional or the minimum educational requirements of the offered position as set forth on the labor certification. In response to the NOID, the petitioner submits a letter, information about [REDACTED] an expert opinion letter from [REDACTED], copies of various EDGE print-outs regarding diplomas/degrees from countries other than India, copies of AAO decisions,¹² the previously submitted expert opinion letter from [REDACTED] newsletter, copies of various curriculum timelines and requirements, new experience letters for the beneficiary and financial documents.

Counsel claims that the beneficiary's education is equivalent to a bachelor's Master's degree in financial management from a college or university in the United States. Alternatively, counsel contends that the beneficiary is qualified for the proffered position by virtue of his ten (10) years of experience in the proffered position. As evidence thereof, counsel has submitted two (2) expert opinion letters.

An expert opinion letter dated June 4, 2013, from [REDACTED] states that there are many countries that combine five- or six- year bachelor's and master's programs leading to the equivalent of a Master's degree in the United States. [REDACTED] states that the five-year sequence of bachelor's and master's studies in Italy is similar to the sequence of bachelor's and master's studies in India and provides citations to EDGE indicating that a Russian *Spetsialiste* degree, a Ukrainian *Dyplom Spetsialiste*, a Bulgarian *Magister*, a Swiss *Diplome* and other combined bachelors and master's studies are "equivalent to a Master's degree in the United States." However, unlike with a Russian *Spetsialiste* degree, a Ukrainian *Dyplom Spetsialiste*, a Bulgarian *Magister* or a Swiss *Diplome*, EDGE states that the beneficiary's Master's degree in India is only "equivalent to a Bachelor's degree in the United States," rather than "equivalent to a Master's degree in the United States." [REDACTED] does not explain why he relies on the conclusions of EDGE with respect to Master's degree programs in other countries, but not on EDGE's conclusions for the Master of Commerce degree in India.

three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), 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 required a degree and did not allow for the combination of education and experience.

¹² The AAO decision submitted are not precedent decisions.

An expert opinion letter dated April 8, 2013, from [REDACTED] concludes that the beneficiary possesses the equivalent of a Master's degree in the United States. Mr. [REDACTED] provides an analysis of the two years of graduate-level studies the beneficiary completed, concluding that his completion of 61.5 graduate-level credits in financial management satisfied the credit requirements for a U.S. Master's degree, which typically requires between 30 and 60 graduate-level credits. [REDACTED] concludes that the beneficiary's five years of study at [REDACTED] constitute a single source master's degree, akin to programs at U.S. universities that produce master's degrees after five years of study. Attached to the [REDACTED] evaluation are a list of U.S. schools that offer five-year joint bachelor's/master's degree programs and a list of U.S. schools that offer one-year master's degree programs, along with their curriculum. It would appear that all of the five-year joint bachelor's/master's degree programs at U.S. schools incorporate a four-year bachelor's degree, not a three-year degree like the beneficiary's in this proceeding. A four-year bachelor's degree would also appear to be the prerequisite for admission to a U.S. school's one-year master's degree program. Accordingly, the five-year joint bachelor's/master's degree programs and one-year master's degree programs in the United States cited by [REDACTED] are not comparable to the beneficiary's post-secondary studies in India, which consist of a three-year bachelor's degree and a two-year master's degree. In the final analysis, the [REDACTED] evaluation does not establish that the beneficiary's education was substantially equivalent to a U.S. master's degree program, which is the crux of the issue. [REDACTED] indicates that he is a member of [REDACTED] and lists the [REDACTED] as his reference that a three-year baccalaureate combined with a two-year Master's degree with at least 50 percent in marks is equivalent to a U.S. Master's degree. However, this opinion cannot supersede the current peer-reviewed information in EDGE.¹³

Therefore, based on the conclusions of EDGE, the evidence in the record is not sufficient to establish that the beneficiary possesses a degree that is, by itself, the foreign equivalent of a U.S. bachelor's degree.

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate. Although the record does establish that the beneficiary possesses a U.S. baccalaureate (or a foreign equivalent degree), for reasons discussed below, the record does not demonstrate that the beneficiary possesses at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

¹³ The bylaws for NAFSA, downloaded from www.nafsa.org on October 24, 2008, do not provide any specific requirements for members in Article II other than the payment of dues. Voting members must be individuals working in educational institutions, training or research facilities, organizations involved with international education or those employed independently.

The Minimum Requirements of the Offered Position

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by 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 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying the *plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification. Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. See *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

In the instant case, the labor certification states that the offered position requires a master's degree in financial management, MIS, mathematics, computer science or engineering, plus 12 months of experience in the proffered position. For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a master's degree in financial management, MIS, mathematics, computer science or engineering.

In addition, the petitioner had also failed to establish that the petitioner possesses the required experience for the offered position.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary's experience. *Id.*

As discussed above, the record contains an experience letter dated December 15, 2010, from [REDACTED] executive director (administration) and partner, on [REDACTED] letterhead, indicating that the company employed the beneficiary as a senior business analyst with the company from August 2003 to July 2010. However, the letter states that the beneficiary was employed as a senior business analyst and not in the proffered position of financial business analyst. The description of the job duties as set forth in the experience letter do not reflect the required experience in the proffered position, i.e. experience regarding financial analysis and data management.

The record also contains an undated experience letter from an unknown individual on [REDACTED] letterhead stating that the company employed the beneficiary from October 10, 2000 to December 31, 2002. However, the letter does not state the title of the beneficiary's position or provide the name and address of the employer and the title of the signatory. The description of the job duties as set forth in the experience letter do not reflect the required experience in the proffered position, i.e. experience regarding financial analysis and data management. Moreover, the description of the beneficiary's job duties contained in the experience letter appear to be different from those job duties listed on the labor certification for the same employment and period of time. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to the AAO's NOID, the petitioner submits an affidavit dated October 9, 2013, from [REDACTED] senior business analyst for [REDACTED]⁴ stating that he was employed as an IT consultant at [REDACTED] while the beneficiary was also employed at [REDACTED] from November 1, 2006 to July 31, 2010, as an employee of [REDACTED]. He states that the beneficiary was employed in the capacity of a senior business analyst and was functionally responsible for financial business analysis. The affidavit goes on to provide the beneficiary's job duties in language identical to that used to describe the proffered position on the labor certification. However, the affidavit does not meet all of the requirements of 8 C.F.R. § 204.5(g)(1) and the petitioner has not established the need for secondary evidence with any documentary evidence of the qualifying employer's closing; the petitioner also does not submit affidavits from two persons to establish the fact of the beneficiary's employment as required by 8 C.F.R. § 103.2(b)(2). Moreover, the description of the job duties contained in the affidavit appears to differ from those job duties listed in the experience letter from the qualifying employer. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Therefore, the submitted experience letters do not establish that the beneficiary possessed the required experience for the offered position.

¹⁴ The petitioner and [REDACTED] have the same owner.

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

III. CONCLUSION

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.