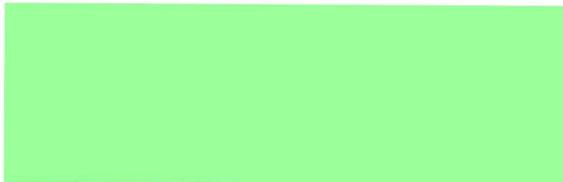


(b)(6)

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



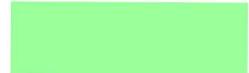
U.S. Citizenship
and Immigration
Services



DATE: OCT 29 2013

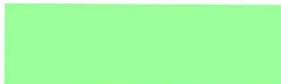
OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE:

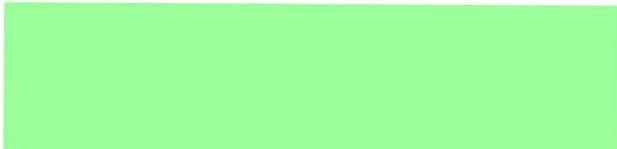
Petitioner:



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 (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,

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

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, 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 computer consulting company. It seeks to permanently employ the beneficiary in the United States as a senior programmer analyst. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner requested 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).

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).

The director's decision denying the petition concluded that the beneficiary of the petition did not satisfy the minimum qualifications for the proffered position as set forth on the labor certification, because the beneficiary did not possess the five years of progressive experience in the specialty, following a U.S. Bachelor's degree, or foreign degree equivalent, to establish the advanced degree equivalency required for visa classification as a member of the professions holding an advanced degree.

On appeal, the petitioner states that the director erred because the beneficiary has the equivalent of an advanced degree based on a U.S. Bachelor's degree equivalency followed by five years of progressive experience in the specialty.

The appeal is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.¹ The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.² A petition that 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.³

¹ 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).

² 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).

³ 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).

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.

Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States. *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 an 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 regulation at 8 C.F.R. § 204.5(k)(4)(i) states, in part:

The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.

In summary, a petition for an advanced degree professional 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. Specifically, for the offered position, the

petitioner must establish that the labor certification requires no less than 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.

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *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, Part H of the labor certification submitted with the petition states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's.
- H.4-B. Major Field of Study: Computer Science, Engineering (any).
- H.5. Training: None required.
- H.6. Experience in the job offered: 60 months.
- H.7. Alternate field of study acceptable?: Yes.
- H.7-A. If Yes, specify the major field of study: Computer Information Systems, Management Information Systems or "related fi."⁴
- H.8. Alternate combination of education and experience acceptable? No.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: Accepted.
- H.10-A. If Yes, number of months experience in alternate occupation required: 60
- H.10-B. Acceptable alternate occupation: Consultant, engineer or related field.

⁴ Presumably, the incomplete word in this field, "fi," refers to the term "field(s)."

- H.14. Require travel/relocation to unanticipated client sites throughout the U.S. Requires proficiency in any two: SQL, Visual Studio, ASP.NET, Oracle, Java, PeopleSoft. Excellent verbal and written communication skills required.

As set forth in the labor certification in this case, an individual can qualify for the offered position based on a Bachelor's degree (or foreign equivalent degree) in Computer Science, Engineering (any), or in the designated alternative fields of study, and five years of experience in the offered position or in the referenced alternate occupations.

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).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. 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."⁵ 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" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

For this classification, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien 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." We cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien 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. 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, 30306 (July 5, 1991). 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").

Thus, the plain meaning of the Act and the regulations is that the beneficiary of a petition for a professional holding an advanced degree must possess a degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree, in addition to the five plus years of progressive experience in the specialty.

In the instant case, the record contains copies of the beneficiary's diplomas and statements of marks for his Bachelor of Commerce degree from the [REDACTED] India, awarded in 2003, and his Master of Science degree in Computer Science awarded September 30, 2007 from [REDACTED] India. Additionally, the petitioner also submitted copies of his

⁵ Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a 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.

certificate and transcript for his professional diploma in [REDACTED] awarded in December 2000 from the [REDACTED] India.

The director in this case concluded that the beneficiary has the equivalent of a U.S. Bachelor's degree, as required, based on the beneficiary's Master of Science degree in Computer Science awarded on September 30, 2007 from [REDACTED] following his 2003 Indian Bachelor of Commerce degree. However, the director found that the petitioner had failed to establish that the beneficiary possessed the requisite five years of progressive experience in the specialty *following* the beneficiary's attainment of the foreign equivalent of a U.S. Bachelor's degree in 2007.

The petitioner, however, seeks to rely on the beneficiary's 2000 [REDACTED] professional diploma in combination with his 2003 Bachelor of Commerce degree from the [REDACTED] to assert that the beneficiary possesses the equivalent of a U.S. Bachelor's degree as of 2003. Thus, the petitioner asserts that the beneficiary's employment experience before the 2007 Indian Master's degree can be considered in establishing the five years of progressive experience because it was acquired *following* the attainment of the 2003 U.S. Bachelor's equivalency.

The record contains an evaluation⁶ of the beneficiary's educational credentials prepared by [REDACTED] on December 19, 2011. The evaluator concludes that the nature of the courses and credits hours involved in obtaining the Bachelor of Commerce degree from [REDACTED] indicate that the beneficiary completed the equivalent of three years of academic studies toward a Bachelor's degree from an accredited U.S. college or university. He further finds that the beneficiary's completion of the Master of Science program at [REDACTED] satisfies the academic requirements for at least a bachelor's-level degree in the field of Computer Science. The evaluator also notes that both the [REDACTED] and [REDACTED] are accredited institutions of higher education in India. Accordingly, Mr. [REDACTED] concludes that based on the Indian Bachelor of Commerce and Master of Science degrees, the beneficiary has attained the equivalent of a four-year Bachelor of Science degree in Computer Science from an accredited college or university in the United States. The evaluator does not consider or assign any academic value to the beneficiary's [REDACTED] program of study.

⁶ 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).

Following a Request for Evidence (RFE) issued by the director on March 26, 2013, the petitioner submitted a second evaluation from Professor [REDACTED] dated April 17, 2013. Professor [REDACTED] evaluated the diploma and transcripts for the beneficiary's 2003 Bachelor of Commerce degree from the [REDACTED] and his certificate and transcripts for his 2000 professional diploma in Network-Centered Computing. Based on a review of these credentials, the evaluator concludes that the beneficiary's "education justifies an[] equivalency to a bachelor's degree in Management Information Systems" based on "his three-year undergraduate education in Commerce supplemented by two years of training in aspects of computer and software development technology." While the evaluator states that range and amount of instruction in computer and software technology in the [REDACTED] training program is comparable to what would be expected of a bachelor's degree program in Management Information Systems, he does not specify the number years of academic studies toward a U.S. Bachelor's degree to which the [REDACTED] training program is equivalent. Further, the evaluator fails to indicate whether [REDACTED] is an accredited institution of higher education in India. Counsel asserts on appeal that [REDACTED] is a recognized institute, but does not contend, or provide any evidence, that it is an accredited institution in India, or that it was at the time the beneficiary completed his studies. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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 must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.⁷ 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.⁸

⁷ 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.

⁸ 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 three-year

According to EDGE, the beneficiary's Bachelor of Commerce degree from India represents attainment of a level of education comparable to two to three years of university study in the United States. Based on the beneficiary's Statement of Marks submitted, the beneficiary's degree appears to have been awarded following three years of study. EDGE also indicates that the Master of Science degree in Computer Science represents attainment of a level of education comparable to a Bachelor's degree in the United States. A copy of the EDGE reports are attached to this decision.

EDGE also provides a great deal of information about the educational system in India. It discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. See <http://edge.aacrao.org/country/credential/post-secondary-diploma?cid=single> (accessed September 10, 2013). EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." See <http://edge.aacrao.org/country/credential/post-graduate-diploma-pgd?cid=single> (accessed September 10, 2013). The "Advice to Author Notes," however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree. Rarely you may find a full time 2 year post graduate diploma.

Id.

As noted by the director in his decision, the record does not establish that [REDACTED] is an accredited university or institution approved by AICTE. Further, the entry requirements for the [REDACTED] program of study are unclear.

AACRAO has published the *P.I.E.R World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in*

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 beneficiary'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 required a degree and did not allow for the combination of education and experience.

the United States (1997). We note that the 1997 publication incorporates the first degree and education degree placements set forth in an earlier 1986 publication. The *P.I.E.R World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* at 43. As with EDGE, these publications represent conclusions vetted by a team of experts rather than the opinion of an individual. In the 1997 publication on page 46, it states that the [REDACTED] title, within the [REDACTED] system, is primarily a vocational/technical qualification, and that the entrance requirement is a class/Grade XII certificate.

The AAO accessed [REDACTED] website to determine what type of educational services it provides. See <http://www.niit.com/services/ITEducationforIndividuals/Pages/ComputerCourses.aspx> (accessed August 23, 2013). [REDACTED] offers a career program [REDACTED]; an engineering technology program (Edgeineers), which “helps engineering students and engineering graduates get acquainted with high-end technologies and meet requirements across their academic lifecycle;” networking and infrastructure management programs; basic computer programs; and short-term technology programs. *Id.* The website does not indicate that [REDACTED] requires a college degree in order to admit a student to any of these programs. Further, there is no evidence that the beneficiary's admission to [REDACTED] was predicated upon the completion of a bachelor's degree program.

As noted by the director, based on EDGE, the AAO concurs that the beneficiary has the equivalent of a U.S. Bachelor's degree, as required, as of 2007, based on the beneficiary's Master of Science degree in Computer Science, India, awarded in September 2007.

The director also properly determined that the petitioner had failed to establish that the beneficiary attained the equivalent of a U.S. Bachelor's degree in 2003 based on a combination of his 2000 [REDACTED] professional diploma and his 2003 Bachelor of Commerce degree. As explained above, for classification as an advanced degree professional, the beneficiary must possess a foreign degree from a college or university that is equivalent to a U.S. bachelor's degree. As the [REDACTED] diploma does not constitute an accredited valid postgraduate diploma, the petitioner has not established that the beneficiary has the foreign equivalent of a U.S. Bachelor's degree.

Accordingly, the AAO concludes that the petitioner failed to establish that the beneficiary possesses the "foreign equivalent" of a Bachelor's degree as of 2003, based on his [REDACTED] professional diploma and Indian Bachelor's degree, because he does not possess a "foreign equivalent degree"⁹ within the

⁹ In *Snapnames.com*, the labor certification application's job requirements in that case specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' See *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005. The beneficiary had a three-year degree and membership in the ICAI. USCIS had concluded that the alien did not qualify for classification as a professional or a member of the professions holding an advanced degree (due to the specific job requirements on the labor certification), which the district court upheld. The court, however, reversed USCIS on its decision to deny the petition under the skilled worker classification as well. In reaching its conclusions, the federal district court in *Snapnames.com, Inc.* determined

meaning of 8 C.F.R. § 204.5(k)(2) as required for classification as a member of the professions holding an advanced degree.

As discussed, the record establishes that the beneficiary possesses the foreign equivalent of a U.S. Bachelor's degree in Computer Science following the attainment of his Indian Master's degree on September 30, 2007. However, in order to qualify for the offered position under the second preference category, the petitioner must demonstrate that, on the May 23, 2012 priority date, the beneficiary satisfied all the qualifications stated on its labor certification application, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Based on the primary requirements, the labor certification in this case requires a U.S. Bachelor's degree and a minimum of five years of work experience in the offered position to qualify for the proffered position. The beneficiary claims on the ETA Form 9089 to have gained this experience while employed in a full-time capacity with: [REDACTED] WA as an application developer from November 19, 2008 to February 6, 2009; [REDACTED] WA as a web developer from September 15, 2008 to October 31, 2008; [REDACTED] in [REDACTED] WA as a web development engineer from October 1, 2007 to September 12, 2008; [REDACTED] in India as a senior systems analyst from February 1, 2007 to September 7, 2007; [REDACTED] in India as a senior software engineer from July 16, 2004 to January 31, 2007; [REDACTED] in India as a senior programmer analyst from December 4, 2003 to July 14, 2004; and [REDACTED] in India as a senior software developer from May 8, 2000 to December 2, 2003.

However, pursuant to 8 C.F.R. § 204.5(k)(2), an "advanced degree" required under the second preference category that is based on a Master's degree equivalency is as [a] United States baccalaureate degree or a foreign equivalent degree *followed by* at least five years of progressive experience in the specialty." (Emphasis added). Accordingly, the beneficiary must have obtained five years of progressive experience in the specialty after having attained his U.S. Bachelor's degree equivalency, which was conferred on September 30, 2007. Based on the beneficiary's employment experience set forth in the labor certification, only the work experience obtained after his 2007 U.S. Bachelor's degree equivalency may be considered in establishing the experience requirements of the offered position. This includes only the beneficiary's employment experience with [REDACTED]

that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, such as the instant case, where the alien is statutorily required to hold a bachelor's degree, the USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19.

██████████ and ██████████ during the period from October 1, 2007, immediately after his Master's degree was awarded, to February 6, 2009, when he was employed by the petitioner, totaling approximately fifteen months of experience, which is insufficient to establish that the beneficiary has the requisite employment experience to qualify for the position.

Furthermore, 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(l)(3)(ii)(A). Here, even if all of the beneficiary's experience set forth in the labor certification could be considered in establishing the experience requirements of the job offered, the record does not contain the requisite letters from all of the beneficiary's former employers, including ██████████. The only letter in the record from ██████████ is one, dated September 7, 2007, accepting the beneficiary's resignation, and makes no reference to the beneficiary's job position with the company, nature of the job duties, duration of employment, or whether the employment was in a full-time capacity. Likewise, the letter, dated September 22, 2008, from a third employer, ██████████ does not verify the beneficiary's subsequent employment with the employer from November 19, 2008 to February 6, 2009. Thus, the evidence in the record does not establish that the beneficiary possessed the required five years of progressive experience in the specialty by the priority date, as set forth on the labor certification.

Additionally, the labor certification at question K.1 does indicate that the petitioner has employed the beneficiary as a programmer analyst since February 2, 2009. However, it is unclear whether this experience can be used to qualify the beneficiary for the offered position. Representations made on the certified ETA Form 9089, which is signed by both the petitioner and the beneficiary under penalty of perjury, clearly indicate that the beneficiary's experience with the petitioner or experience in an alternate occupation cannot be used to qualify the beneficiary for the certified position. *See* 20 C.F.R. § 656.17. Specifically, the petitioner indicates "not applicable" in response to question J.19, which inquires whether the beneficiary possesses the alternate combination of education and experience, if permitted by the terms of the labor certification. In response to question J.20, the petitioner indicated "yes" to the question whether the beneficiary possesses experience in an alternate occupation indicated in question H.10. The petitioner responded "no" to question J.21, which asks, "Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?" In general, if the answer to question J.21 is no, then the experience with the employer may be used by the beneficiary to qualify for the proffered position if the position was not substantially comparable, as defined in 20 C.F.R. § 656.17, and the terms of the ETA Form 9089 at H.10 provide that applicants can qualify through an alternate occupation. Here, as noted, the beneficiary indicates in response to question K.1 that the beneficiary was employed as a programmer analyst with the petitioner beginning February 9, 2009. The job duties of the position indicated are the same or similar to those of the position offered. Therefore, it appears that the experience gained with the petitioner was either in the position offered or is substantially comparable as he was performing the same job duties more than 50 percent of the time. According to DOL regulations, therefore, the petitioner cannot rely on this experience for the beneficiary to qualify for the proffered

position. Thus, the evidence in the record does not establish that the beneficiary possessed the required experience set forth on the labor certification by the priority date.

As set forth above, to qualify as a member of the professions, the beneficiary is required to have a Bachelor's degree from a college or university followed by five years of progressive experience in the specialty. There is no provision in statute or regulation that compels USCIS to readjudicate a petition under a different preference classification once the director has rendered a decision. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

In summary: (1) the petitioner has failed to establish that the beneficiary possesses, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree, as required for visa classification as a member of the professions holding an advanced degree, based on a combination of the beneficiary's 2000 [REDACTED] professional diploma and his Indian Bachelor's degree awarded in 2003; and (2) although the record shows that the beneficiary possesses a degree from a college or university that is a foreign equivalent degree of a U.S. Bachelor's degree based on his 2007 Indian Master's degree, the petitioner has still failed to establish that the beneficiary possesses the five years of a progressive experience following the attainment of this U.S. Bachelor's degree equivalency, as required for visa classification as a member of the professions holding an advanced degree. Therefore, the petition cannot be approved under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

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.