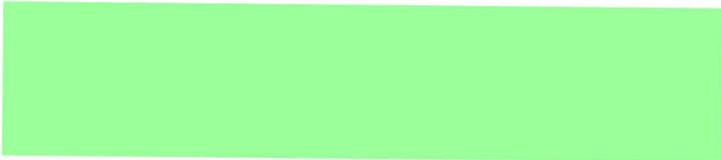




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OFFICE: NEBRASKA SERVICE CENTER FILE: 

APR 03 2014

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:

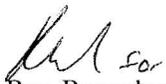


INSTRUCTIONS:

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, Nebraska Service Center, denied the employment-based immigrant visa petition. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motions to reopen and reconsider. The motions will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner describes itself as a software service provider. It seeks to permanently employ the beneficiary in the United States as a systems analyst. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the beneficiary does not hold a Master's degree as required by the terms of the labor certification. The director denied the petition accordingly.

On February 4, 2014, the AAO dismissed the appeal, holding that the petitioner did not submit evidence to demonstrate that the beneficiary holds the education or experience required for the position. The petitioner then submitted the instant motion to reopen and reconsider. We will accept the motions to reopen and reconsider the matter based on the new information submitted and arguments made by counsel. Thus, the motions to reopen and reconsider are granted. 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 record shows that the motion 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. *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.

As set forth in the director's February 13, 2013 denial and the AAO's February 4, 2014 decision, the issue in this case is whether the beneficiary has the education and experience required by the terms of the labor certification to qualify for the proffered position. 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).

As stated in the previous decision, the labor certification here requires an advanced degree professional.¹ However, the petitioner must establish that the beneficiary satisfied all of the

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

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).

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

- H.4. Education: Master's degree (Computer Science, Business Administration or related).
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months required.
- 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: 24 months as a Software Engineer, Systems Engineer, Systems Analyst.
- H.14. Specific skills or other requirements: Require skills in C++ and VC++. Any reasonable combination of training, education and experience is acceptable.

Part J of the labor certification states that the beneficiary possesses a Master's degree in Business Administration from [REDACTED] India, completed in 2006. The previous AAO decision analyzed a copy of the beneficiary's Master

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).

of Business Administration degree from ██████████ diploma and transcripts issued in 2006 and the beneficiary's Bachelor of Engineering degree in Computer Science and Engineering from the ██████████ awarded in April 2001. The previous AAO decision also considered an evaluation of the beneficiary's educational credentials prepared by ██████████ on March 12, 2013.

The director and the AAO also relied on the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).² USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.³ Based on the recommendations of EDGE, the beneficiary's Bachelor of Engineering degree represents the equivalent of a U.S. bachelor's degree. EDGE further recommends that the beneficiary's Master of Business Administration degree represents the equivalent of a U.S. bachelor's degree.

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

² According to its website, www.aacrao.org, 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." <http://www.aacrao.org/About-AACRAO.aspx> (accessed March 28, 2014). Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (accessed March 28, 2014). 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. 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.

³ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. 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.

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, U.S. Citizenship and Immigration Services (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).

As stated in the previous AAO decision, the petitioner submitted evidence to establish that the beneficiary holds the equivalent of two U.S. bachelor's degrees. The previous decision, however, notes that the terms of the labor certification require a successful applicant to have a U.S. Master's degree or the foreign equivalent thereto and that no alternate combination of education and experience would be acceptable.

On appeal, counsel stated that the petitioner provided an alternative in part H.14 that should allow the beneficiary to qualify with a bachelor's degree. The AAO's previous decision noted that the last sentence of part H.14 appears to be language mandated by the DOL pursuant to *Matter of Francis Kellogg*, 94 INA 465 (BALCA 1998). The AAO does not interpret the language to mean that the employer would accept lesser qualifications than the stated primary and alternative requirements on the labor certification. See the following Board of Alien Labor Certification Appeals (BALCA) decisions: *Federal Insurance Co.*, 2008-PER-00037 (BALCA Feb. 20, 2009) and *Matter of Agma Systems LLC*, 2009-PER-00132 (BALCA Aug. 6, 2009). The AAO decision also noted that if the *Kellogg* language were read to provide for an alternative to the stated requirements on the labor certification, the labor certification would not support the visa category requested, as it would require less than a baccalaureate degree for the position.

On motion, counsel states that the language provided for in H.14 should be considered separate from the requirements found in *Matter of Francis Kellogg* and that, as a result, the beneficiary would qualify for the proffered position with his bachelor's degree and ten years of experience in the field. Furthermore, counsel states that the language stating that "any reasonable combination of training, education and experience" should be considered along with the requirements of the immigrant category. Counsel concludes that considering the language in H.14 with the immigrant category

requirements, the petitioner would not allow for an applicant to qualify for the position with less than a bachelor's degree.

As stated in the previous AAO decision, 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).⁴ *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.

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.

⁴ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

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.

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). As stated above, it is DOL's role to determine whether the proposed employment would adversely affect U.S. workers and whether qualified U.S. workers are available for the position. DOL does not determine whether qualifications for the position listed on the labor certification would qualify a position for a particular immigrant category. As a result, DOL would not read the language the petitioner included on Part H.14 to limit its meaning to "any reasonable combination of training, education, and experience *equivalent to a bachelor's or master's degree.*" Similarly, other applicants for the position would not be apprised of the true nature of the requirements of the position with the wording as stated on the labor certification. We are bound by the terms of the employment as stated on the labor certification and may not divine qualifications that are not expressly conveyed by the petitioner.

For the reasons stated above, the AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. 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 prior AAO decision also found, beyond the decision of the director, that it is unclear whether the beneficiary possesses the experience required for the proffered position. Part K of the labor certification states that the beneficiary began employment with the petitioner on September 30, 2012 as a software engineer and worked for [REDACTED] as a systems engineer/systems analyst from September 12, 2002 to May 18, 2007. The previous AAO decision considered an experience letter from [REDACTED] letterhead stating that the company employed the beneficiary as a Systems Analyst/Engineer from September 12, 2002 until May 18, 2007.

The previous AAO decision noted that 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 cannot be used to qualify the beneficiary for the certified position.⁵ In response to question J.21, which asks, "Did the alien gain any of the qualifying

⁵ 20 C.F.R. § 656.17 states:

(h) *Job duties and requirements.* (1) The job opportunity's requirements, unless adequately documented as arising from business necessity, must be those normally required for the occupation

.....
(4)(i) Alternative experience requirements must be substantially equivalent to the primary requirements of the job opportunity for which certification is sought; and

(i) If the alien beneficiary already is employed by the employer, and the alien does not meet the primary job requirements and only potentially qualifies for the job by virtue of the employer's alternative requirements, certification will be denied unless the application states that any suitable combination of education, training, or experience is acceptable.

(ii) *Actual minimum requirements.* DOL will evaluate the employer's actual minimum requirements in accordance with this paragraph (i).

(1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity.

(2) The employer must not have hired workers with less training or experience for jobs substantially comparable to that involved in the job opportunity.

(3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract employee. The employer can not require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:

(i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or

(ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position.

(4) In evaluating whether the alien beneficiary satisfies the employer's actual minimum requirements, DOL will not consider any education or training obtained by the alien beneficiary at the employer's expense unless the employer offers similar training to domestic worker applicants.

(5) For purposes of this paragraph (i):

(i) The term "employer" means an entity with the same Federal Employer Identification Number (FEIN), provided it meets the definition of an employer at § 656.3.

experience with the employer in a position substantially comparable to the job opportunity requested?,” the petitioner answered “no.” 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 comparable⁶ and the terms of the ETA Form 9089 at H.10 provide that applicants can qualify through an alternate occupation. Here, the beneficiary indicates in response to question K.1. that his position with the petitioner was as a software engineer, which contain virtually identical job duties as the job requirements for the proffered position.⁷ According

(ii) A “substantially comparable” job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

⁶ A definition of “substantially comparable” is found at 20 C.F.R. § 656.17:

5) For purposes of this paragraph (i):

...
(ii) A “substantially comparable” job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

⁷ Job requirements for the proffered position are:

1. Design and implement systems, network configurations, security and network architecture, including hardware and software technology.
2. Perform systems study, analysis, coding, testing, maintenance and enhancement.
3. Develop facial recognition software using Visual Basic and VC++.
4. Develop algorithms for the detection and tracking of objects.
5. Develop business system solutions based on business functions, workflow and process.
6. Integrate the systems with customized software.

The job details for the beneficiary’s position currently with the petitioner are:

1. Involved in Systems study, design, analysis, coding, testing, maintenance and enhancement.
2. Involved in Requirement analysis, Database design, Data modeling and complete software lifecycle.
3. Responsible for developing the facial recognition software using Microsoft Visual Basic and VC++.
4. Designing and implementing algorithm for Eye Detection.
5. Configured automatic camera movement with detection and tracking of objects.
6. Designed user interface for a camera using VC++ and MFC and implemented the camera control protocol.

to DOL regulations, therefore, the petitioner cannot rely on this experience for the beneficiary to qualify for the proffered position. As the beneficiary's experience with the petitioner was in the position offered, the experience may not be used to qualify the beneficiary for the proffered position.

As stated in the previous AAO decision, the other company listed by the beneficiary as a previous employer which provided necessary experience is [REDACTED]. It is noted that the name of this employer is virtually identical to that of the petitioner's and appears to be an overseas affiliate of the petitioner. On motion, counsel states that the petitioner and [REDACTED] "are not affiliated or related" and that the two companies are "different entit[ies] and operate independently from each other." The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). As a result, the beneficiary's work as a systems engineer / systems analyst may not be used to demonstrate that the beneficiary has the 24 months of experience required by the terms of the labor certification.

The previous AAO decision considered a letter submitted from [REDACTED], which did not indicate whether the beneficiary was working in a full-time or part-time position for [REDACTED]. On motion, the petitioner submitted a letter dated March 3, 2014 from [REDACTED] stating that the beneficiary was employed on a full-time basis from September 12, 2002 to May 18, 2007 with [REDACTED] as a systems analyst/ engineer.⁸

The petitioner also submitted an August 23, 2002 letter, which counsel claims was inadvertently omitted from previous filings, on [REDACTED] letterhead. The letter, bearing an illegible signature, states that the beneficiary worked as a systems engineer from June 11, 2001 through August 20, 2002. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's labor certification, lessens the credibility of the evidence and facts asserted. The ETA Form 9089 signed by both the petitioner and the beneficiary does not include any work experience with [REDACTED]. In addition, the letter fails to include the name and title of the writer and does not indicate

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7. Researched and designed algorithms for detection and tracking of objects.
 8. Designed and implemented data compression software using C++ and VC++ and provided technical support for the software.
 9. Involved in applications installation and maintenance of systems and networks.

⁸ The previous AAO decision also questioned how the beneficiary could have pursued a Master of Business Administration from [REDACTED] while also working for [REDACTED] (India) in a full-time capacity. On motion, the petitioner submitted a letter from [REDACTED]

University, stating that the beneficiary's classes in pursuit of his MBA were completed on the weekends through the distance learning program. The petitioner also submitted information about the distance learning program available on www.careers360.com. The evidence submitted on motion resolves the discrepancy noted in the previous AAO decision regarding how the beneficiary could claim to be working in a full-time capacity while attending classes in a full-time capacity.

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whether the beneficiary was employed in a full-time or part-time capacity. *See* 8 C.F.R. § 204.5(g)(1) and (l)(3)(ii)(A). For these reasons, the letter may not be accepted to demonstrate the beneficiary's experience.

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 will remain denied.

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 motions to reopen and reconsider are granted. The petition remains denied.