

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



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: **APR 09 2014**

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)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

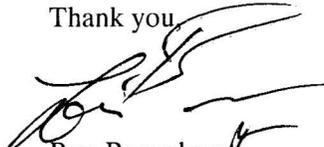
ON BEHALF OF PETITIONER:

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, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks to employ the beneficiary permanently in the United States as a physical therapist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The director denied the petition concluding that “the petitioner has not shown that the beneficiary possesses an advanced degree or the five years of progressive experience in the specialty required with the baccalaureate degree.”

The petition is for a Schedule A, Group I occupation. The U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of aliens in Schedule A occupations. 20 C.F.R. § 656.5. Only professional nurses and physical therapists are on the current list of Schedule A, Group I occupations. 20 C.F.R. § 656.5(a).

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition is filed directly with USCIS with an uncertified ETA Form 9089, in duplicate. 8 C.F.R. §§ 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

On appeal, the petitioner submitted a brief and additional evidence. On July 15, 2013, the AAO issued a notice of intent to dismiss the appeal (NOID) in accordance with the regulation at 8 C.F.R. § 103.2(b)(16). The NOID advised the petitioner, in part, of 1) information which was not consistent with a conclusion that the beneficiary’s bachelor’s degree in physical therapy from the Philippines is the foreign equivalent of an advanced degree, 2) inconsistencies in the beneficiary’s employment history and 3) failure to comply with the notice of filing regulations. The petitioner did not respond to the NOID.

For the reasons discussed below, upon review of the entire record, the petitioner has not established that the beneficiary is eligible for the classification sought or that the beneficiary meets the minimum job requirements listed on the ETA Form 9089.

## I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. --

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who

because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

In addition, for the classification at issue, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i).

The regulation at 8 C.F.R. § 204.5(k)(2) defines an “advanced degree” 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.

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.

A physical therapist ultimately seeking admission based on an approved immigrant petition must present a certificate from a credentialing organization listed at 8 C.F.R. § 212.15(e). 8 C.F.R. §§ 212.15(a)(1), (c). The provisions at 8 C.F.R. §§ 212.15(f)(1)(i) and (iii) require that approved credentialing organizations for health care workers verify “[t]hat the alien’s education, training, license, and experience are comparable with that required for an American health care worker of the same type” and “[t]hat the alien’s education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States.” The latter verification, however, is not binding on the Department of Homeland Security (DHS). 8 C.F.R. § 212.15(f)(1)(iii).

## II. ANALYSIS

In order to be eligible for the requested classification as a member of the professions holding an advanced degree, the petitioner must establish that the beneficiary possesses either a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate or a United States

baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty. On appeal, the petitioner asserted that the beneficiary “does indeed possess well over five years of progressive experience.” However, as discussed in the NOID, the employment verification letters did not “provide sufficient information to determine the number of hours worked by the beneficiary.” In addition, the letters are inconsistent with the employment information listed on the ETA Form 9089. As the AAO did not receive any response to its NOID, these issues remain unresolved. Therefore, the petitioner must demonstrate that the beneficiary is eligible for the classification by virtue of his degree alone.

The beneficiary’s eligibility to practice in the United States is not at issue. Similarly, that the beneficiary possesses the necessary credentials for licensure is also not an issue. The petitioner must establish, however, that the beneficiary not only is a member of the professions holding an advanced degree, but also satisfied all of the educational, training, experience and any other requirements of the offered position as of the priority date. 8 C.F.R. §§ 103.2(b)(1), (12). See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg’l Comm’r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). In evaluating the job offer portion of the ETA Form 9089 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 v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). 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. Chertoff*, No. CV-06-65.MO, 2006 WL 3491005 \*7 (D. Or. Nov. 30, 2006).

On the ETA Form 9089, Part H, the petitioner indicated on line H.4 that the minimum education level for the position is a master’s degree in physical therapy. The petitioner further indicated on line H.8 that an alternate combination of 5 years of progressive experience in addition to a bachelor’s degree in physical therapy would be acceptable. On line H.9, the petitioner indicated that a foreign educational equivalent would be acceptable. On line H.10, the petitioner indicated that experience in an alternate occupation is not acceptable. As previously stated and discussed in the NOID, the petitioner has not demonstrated that the beneficiary has 5 years of progressive experience. Thus, the petitioner must establish that the beneficiary meets the minimum educational requirement of the offered position, a U.S. master’s degree in physical therapy or the foreign equivalent of that degree, by virtue of his degree alone.

The petition included a copy of the beneficiary’s 1998 Bachelor of Science in Physical Therapy degree and transcript from the [REDACTED] in the Philippines, a duplicate revised “Report of Evaluation of Educational Credentials” (report) dated May 23, 2011 from the Foreign Credentialing Commission on Physical Therapy (FCCPT), and a duplicate revised “FCCPT Course Work Evaluation Checklist” (evaluation) also dated May 23, 2011. The FCCPT report states that the beneficiary’s degree program consisted of four years of “[c]lassroom time” and ten months of “[c]linical time” and that the school “is comparable to a regionally accredited college or university in the U[nited] S[tates].” The report also states that the program’s admission requirement is the

equivalent of a diploma from a U.S. high school. The report also indicates that courses from [REDACTED] were included in the evaluation. The report found that the beneficiary's "education is substantially equivalent to the first professional degree in physical therapy in the United States, at the time of graduation. The report also states that "[t]he first professional degree in physical therapy is the master's degree or higher."

In a letter dated May 23, 2011, [REDACTED], Managing Director of Credentialing Services at FCCPT, explained that, in 2001, the Commission on Accreditation in Physical Therapy Education (CAPTE) discontinued the accreditation of baccalaureate degree programs in the United States. Dr. [REDACTED] further explained that U.S. accredited programs have converted to post-baccalaureate programs. [REDACTED] concluded that the current first professional degree in the United States is at least a master's degree or higher.

As stated in the NOID, the fact that, after 2001, the United States no longer awards baccalaureate degrees in physical therapy is not, by itself, persuasive evidence that the beneficiary's 1998 bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's degree in physical therapy. Furthermore, the first professional degree in physical therapy in the United States at the time of the beneficiary's graduation in 1998 was a bachelor's degree, not a master's degree.

On appeal, the petitioner stated that "FCCPT is the only agency approved by USCIS to evaluate the credentials of physical therapists for visa screen purposes." As previously stated, the regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers is for the limited purpose of overcoming the inadmissibility provision pursuant to 8 C.F.R. § 212.15(e). FCCPT's authority, which USCIS granted pursuant to 8 C.F.R. § 212.15(e)(3), does not extend to determining whether (1) the beneficiary's education satisfies the regulatory definition of "advanced degree" or (2) the beneficiary's education satisfies the minimum requirements stated on the ETA Form 9089, the issues in the instant petition. Regardless, a credentialing organization's verification of the beneficiary's education, training, license and experience for admission into the United States is not binding on DHS. 8 C.F.R. § 212.15(f)(1)(iii).

In addition, 8 C.F.R. § 212.15(f)(i) authorizes FCCPT to look at all of the individual's credentials in the aggregate when it is considering the individual's suitability for health care worker certification for admissibility purposes. As FCCPT looks at coursework and credentials beyond the beneficiary's degree, it does not evaluate whether the beneficiary's degree from the Philippines is a single foreign equivalent degree above that of a baccalaureate, the requirement for this classification, or a single foreign equivalent degree to a U.S. master's degree in physical therapy, the degree listed on the ETA Form 9089. *See Snapnames.com, Inc.*, 2006 WL 3491005 at \*11 (finding USCIS was justified in concluding that the combination of a three-year degree followed by the coursework required for membership in the [REDACTED] was not a single college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

Where the analysis of the beneficiary's credentials relies on "equivalence to completion of a United States baccalaureate or higher degree," the result is the "equivalent" of an advanced degree rather than a "foreign equivalent degree."<sup>1</sup> The provided evaluation and report make it clear that FCCPT relied on coursework from multiple sources, and not the individual's Bachelor of Science in Physical Therapy degree alone, to determine "substantial equivalence," which is a different standard. Based upon FCCPT's methodology, the evaluation is not a proper basis to determine whether the beneficiary holds the foreign equivalent of a U.S. master's degree in physical therapy, the requirement listed on the ETA Form 9089 or the foreign equivalent of an advanced degree as required by the classification where the petitioner has not documented that the beneficiary has five years of experience.

According to the Electronic Database for Global Education (EDGE), the Bachelor of Arts/Science/Commerce, etc. degree in the Philippines "represents attainment of a level of education comparable to a bachelor's degree in the United States." Under the credential description section, EDGE states that the bachelor's degree is "four to five years beyond the high school diploma (except Law which is an advanced degree as in the USA) with four being the most common length," but that "(Architecture, Engineering, Physical Therapy and Occupational Therapy for example, are five)." EDGE further states that the Master of Arts/Sciences degree in the Philippines "represents attainment of a level of education comparable to a master's degree in the United States."

In its NOID, the AAO advised the petitioner of the information from EDGE and provided information about the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which created EDGE. The AAO also provided a copy of a letter from Dale Gough, Director, AACRAO International Education Services, explaining the conclusions in EDGE. The AAO noted that USCIS considers EDGE to be a reliable source of information about foreign credential equivalencies.<sup>2</sup> The AAO provided the petitioner with copies of all of the relevant information.

The information from EDGE and FCCPT is inconsistent with a finding that the beneficiary holds the foreign equivalent of a U.S. master's degree in physical therapy, the degree required on the ETA Form 9089 or a single foreign equivalent degree above that of a baccalaureate, the requirement for this classification in the absence of five years of experience. It is incumbent upon the petitioner to submit relevant and probative evidence to establish the beneficiary's eligibility. *Matter of Chawathe*, 22 I&N Dec. 369, 376 (AAO 2010). Where an opinion is not in accord with other information, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron*

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<sup>1</sup> Compare 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

<sup>2</sup> See *Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also *Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

*International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.*

In the instant petition, the petitioner has not submitted relevant and probative evidence that establishes by a preponderance of the evidence that (1) the beneficiary's degree is a foreign equivalent degree above that of a baccalaureate degree, as required by the classification and (2) the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign educational equivalent of a U.S. master's degree in physical therapy, as required by the ETA Form 9089 in the absence of five years of experience.

In addition, as stated in the NOID, "the petitioner has not demonstrated that it complied with the notice requirements," specifically that "the notice 'be provided between 30 and 180 days before filing the application,'" pursuant to 20 C.F.R. § 656.10(d)(iv).

As the AAO did not receive a response to its NOID, the petitioner has not overcome the issues discussed above. Therefore, the petitioner has not established that the beneficiary meets the minimum requirements set forth on the ETA Form 9089 or that the beneficiary holds an advanced degree as defined by the regulation at 8 C.F.R. § 204.5(k)(2). In addition, the petitioner has not demonstrated that it complied with the notice of filing requirements. Therefore, the petitioner has not established that the beneficiary qualifies for classification as an advanced degree professional under section 203(b)(2) of the Act.

### III. CONCLUSION

The petitioner has not established that the beneficiary meets the minimum requirements of the job offered, as listed on the ETA Form 9089. In addition, the petitioner has not established that the beneficiary qualifies for immigrant classification as an advanced degree professional pursuant to section 203(b)(2) of the Act, and the implementing regulation at 8 C.F.R. § 204.5(k)(2). Finally, the petitioner has not established compliance with the notice of filing requirements. Accordingly, the petition may not be approved.

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, the petitioner has not met that burden.

**ORDER:** The appeal is dismissed.