

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)

[Redacted]

DATE: APR 22 2014 OFFICE: TEXAS SERVICE CENTER

FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

[Redacted]

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.

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, approved the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on certification pursuant to 8 C.F.R. § 103.4. The director's decision will be affirmed.

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 concluded that the "beneficiary has indeed acquired five years of progressive experience as a physical therapist following the conferment of his Filipino Bachelor of Science degree and therefore meets the definition of an advanced 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 petitioner files the petition 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.

The director certified the matter to the AAO regarding "the equivalency of physical therapy education in the Philippines to United States education." The notice of certification advised the petitioner that it could submit a brief to the AAO within 30 days pursuant to the regulation at 8 C.F.R. § 103.4(a)(2). The petitioner submitted a brief and additional evidence. On July 26, 2013, the AAO issued a notice of intent to withdraw the director's favorable finding in accordance with the regulation at 8 C.F.R. § 103.2(b)(16). The notice advised the petitioner of information that was not consistent with a conclusion that the beneficiary's bachelor's degree in physical therapy from the Philippines meets the regulatory definition of advanced degree and raised the issue of whether the beneficiary met the minimum requirements of the job offered, as listed on the ETA Form 9089. In response, the petitioner submitted a brief and additional evidence. Upon review of the response, the only remaining issue is the one the director certified: the equivalency of the beneficiary's foreign degree.

For the reasons discussed below, upon review of the entire record, the petitioner has established that the beneficiary is eligible for the classification sought based on his degree that is the foreign equivalent of at least a U.S. baccalaureate degree followed by more than five years of progressive experience in the specialty.

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.

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

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 a bachelor's degree plus five years of progressive experience as a physical therapy would also be acceptable. On line H.9, the petitioner indicated that a foreign educational equivalent would be acceptable.

The petition included a copy of the beneficiary's Bachelor of Science in Physical Therapy degree and transcript from [REDACTED] in the Philippines, a "Comprehensive Credential Evaluation Certificate" from the Foreign Credentialing Commission on Physical Therapy (FCCPT), an evaluation from [REDACTED] of the [REDACTED] which states that the beneficiary has "the equivalent of a master of physical therapy degree from a regionally accredited college or university in the United States," and letters from the beneficiary's current and former employers which document a minimum of five years of progressive experience as a physical therapist.

Regarding the evaluation, the AAO's notice specifically addressed the petitioner's failure to provide copies of Ms. [REDACTED] sources. In addition, the AAO advised that, 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."

Finally, the AAO provided information about the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which created EDGE. The AAO noted that USCIS considers EDGE to be a reliable source of information about foreign credential equivalencies.¹ While the petitioner's response is correct that the referenced Liaison Council is no longer in existence, according to the EDGE home page, AACRAO does still maintain a group of experts that reviews the information in EDGE. The AAO also provided a copy of a letter from Dale Gough, Director, AACRAO International Education Services, received in response to AAO's request for further information on this issue. The letter explains that the educational system in the Philippines is "based on the U[.]S[.] educational model...and [] employs [the same] nomenclature." Mr. Gough further states that "[t]he master of science in physical therapy exists in the Philippines as a higher or advanced degree and it is THAT degree which would be comparable to the U[.]S[.] master's degree." The AAO provided the petitioner with copies of all of the relevant information.

The petitioner's response did not include Ms. [REDACTED] source materials. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The response discusses degrees in different occupations, which are not relevant, and the Georgia licensing requirements. Georgia requires foreign educated physical therapists to document credentials substantially equivalent to that of entry-level United States-educated therapists rather than demonstrate a degree above a baccalaureate. Ga. Comp. R. & Regs. 490-2-03(1)(a) (2013). The response further asserts that EDGE does not address individual degrees but types of degrees. Even if the petitioner were to establish that different Bachelor of Science in Physical Therapy degrees in the Philippines have different equivalencies, and it has not, the petitioner has established that the beneficiary may meet the labor certification requirements through a combination of his baccalaureate degree and five years of experience. The petitioner has also documented that the beneficiary has at least five years of post-baccalaureate progressive experience in the specialty. As such, in considering the certified issue of the equivalence of the beneficiary's degree, the petitioner need only establish that the beneficiary holds at least the foreign equivalent of a U.S. baccalaureate degree. The AAO affirms the director's finding that the beneficiary holds a minimum of a baccalaureate degree and five years of progressive experience. As such, the petitioner has established that the beneficiary meets the minimum requirements set forth on the ETA Form 9089 and that the beneficiary holds an advanced degree as defined by the regulation at 8 C.F.R. § 204.5(k)(2), which includes a baccalaureate degree followed by at least five years of progressive experience in the specialty. Therefore, the petitioner has established that the beneficiary qualifies for classification as an advanced degree professional under section 203(b)(2) of the Act.

¹ 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).

III. CONCLUSION

The petitioner has established that the beneficiary meets the minimum requirements of the job offered, as listed on the ETA Form 9089. In addition, the petitioner has 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). Accordingly, the petition may be approved.

The decision of the director approving the petition will be 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 been met.

ORDER: The decision of the director is affirmed. The petition is approved.