



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE:

**AUG 14 2014**

OFFICE: NEBRASKA SERVICE CENTER

FILE

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as an Advanced Degree Professional 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 in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the immigrant visa petition and certified the matter to the Administrative Appeals Office (AAO). The matter will be both summarily dismissed as abandoned, and denied based on the record, pursuant to 8 C.F.R. § 103.2(b)(13)(i).

The petitioner describes itself as a “social media/internet” business. It seeks to permanently employ the beneficiary in the United States as a Capacity Planning Engineer. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup> A petition that fails to comply with the technical requirements of the law may be denied by our office even if the director does not identify all of the grounds for denial in the initial decision.<sup>2</sup>

#### I. SUMMARY DISMISSAL

The Director certified the petition to this office with a decision dated May 1, 2013. *See* 8 C.F.R. § 103.4(a)(1) (a regional service center director may certify his or her decision to the AAO “when the case involves an unusually complex or novel issue of law or fact”). The director’s certified decision denied the petition, finding that the petitioner failed to establish that the beneficiary possessed a U.S. master’s degree, or foreign degree equivalent, in the field of Computer Science, as required by the terms of the labor certification. Form I-290C accompanied the director’s certified decision, notifying the petitioner of its ability to submit a brief or other written statement to the AAO within 30 days of the certified decision. The petitioner did not submit a brief or other written statement to this office.

On June 13, 2013, we issued a Request for Evidence (RFE) with a notice of derogatory evidence to the petitioner and counsel. Our RFE noted that the director’s certified decision relied on an educational equivalency from the Electronic Database for Global Education (EDGE) of the American Association of Collegiate Registrars and Admissions Officers (AACRAO), without having first given notice to the petitioner of the adverse information contained in EDGE. Our RFE included a copy of the EDGE report, and provided the petitioner an opportunity to respond to that information and to the director’s decision. The petitioner timely responded through counsel, and that response is included in the record and is considered in the analysis below regarding whether the petitioner has demonstrated if the beneficiary is qualified for the position offered.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, 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).

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

On April 11, 2014, we sent the petitioner a supplemental Notice of Intent to Dismiss (NOID) the matter with a copy to counsel of record. Our NOID indicated that the evidence in the record did not establish that the beneficiary possessed the education required to meet the minimum educational requirements of the offered position. The NOID allowed the petitioner 30 days in which to submit a response. We informed the petitioner that failure to respond to the NOID would result in a dismissal of the appeal.

As of the date of this decision, the petitioner has not responded to the NOID. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Because the petitioner failed to respond to the NOID, the matter will be summarily dismissed as abandoned pursuant to 8 C.F.R. § 103.2(b)(13)(i).

## II. DENIAL ON THE RECORD

### A. Factual and Procedural History

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).<sup>3</sup> The priority date of the petition is June 29, 2012.<sup>4</sup>

At issue in this case is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification. The issue and petition were certified to this office following the Director's May 1, 2013, decision. *See* 8 C.F.R. § 103.4(a)(1).

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

- H.4. Minimum education level required: **Master's degree.**
- H.4-B. Major field of study: **"Computer Science."**
- H.5. Training: **None required.**
- H.6. Experience in the job offered: **24 months.**
- H.7. Alternate field of study: **None accepted.**
- H.8. Alternate combination of education and experience: **None accepted.**
- H.9. Foreign educational equivalent: **Accepted.**
- H.10. Experience in an alternate occupation: **Accepted.**
- H.10-A. Number of months of experience in the alternate occupation: **24 months**
- H.10-B. Job title of the acceptable alternate occupation: **"Software Developer, Performance Engineer or related field."**

<sup>3</sup> *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

<sup>4</sup> The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

H.14. Specific skills or other requirements: **“Java; Perl; MySQL; Unix Shell Scripting; HTTP and UDP Protocols.”**

The labor certification states that the offered position of Capacity Planning Engineer requires a U.S. master’s degree, or the foreign equivalent thereof, in Computer Science, plus 24 months of experience in the position offered or as a software developer, performance engineer, or in a related occupation.

The terms of the labor certification permit an applicant to qualify based on alternative experience in a related occupation; however, the petitioner did not similarly expand the alternative acceptable fields of study by which one might qualify for the position offered, despite the option to do so on ETA Form 9089. Rather, the petitioner indicated that the field of “Computer Science” was the only acceptable field of study for the position offered.<sup>5</sup> Similarly, ETA Form 9089 does not state that the petitioner will accept any related field of study.

Part J of the labor certification states that the beneficiary received a Master’s degree in Computer Science from [REDACTED] India, in 2004. As such, the labor certification before DOL as drafted by the petitioner indicated that the beneficiary possessed the degree required, a master’s degree, in the field of study required, Computer Science, as of 2004.

The record of proceeding contains two postgraduate degrees awarded to the beneficiary.<sup>6</sup> The record contains copies of a Master of Business Administration (MBA) degree awarded to the beneficiary from [REDACTED] India, in 1999, with transcripts from this two-year MBA program. The petitioner has not asserted that this degree relates to the position offered, and on the face of the document it does not appear to qualify the beneficiary for the position offered; therefore, we will not consider it in the analysis below.

The record also contains copies of a “Master of Computer Applications” degree, awarded to the beneficiary by [REDACTED] India, in 2004, and transcripts documenting two years of study at [REDACTED]. One transcript indicates the beneficiary completed the second year of study in a postgraduate-level Computer Science program at that institution. The other transcript indicates that the beneficiary completed a third year of study in a postgraduate-level Computer Applications program at that institution. The record does not contain a transcript of the beneficiary’s first year of study. This deficiency was noted in our NOID, and the petitioner was requested to provide the missing transcript. However, as noted above, the petitioner failed to respond to the NOID.

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<sup>5</sup> The labor certification states in Part H.8 that an alternate combination of education and experience is not acceptable. ETA Form 9089, Part H.7, specifically asks: “Is there an alternate field of study that is acceptable?” The petitioner indicated in response to Part H.7 that an alternate field of study is not acceptable for the position offered.

<sup>6</sup> The record contains copies of a Bachelor of Science degree awarded to the beneficiary by [REDACTED] in 1997, along with transcripts documenting that the beneficiary completed a three-year baccalaureate program.

The record contains three evaluations of the beneficiary's foreign educational credentials. A September 23, 2008, evaluation by [REDACTED] concludes that the beneficiary's Master of Computer Applications degree equates to a U.S. Master of Science degree in Computer Science. A July 28, 2011, evaluation by [REDACTED] Ph.D., for [REDACTED] states that the beneficiary's two-year MBA is substantially similar to a U.S. awarded MBA, and that the beneficiary's three-year Master of Computer Applications degree is substantially similar to a U.S. Master's degree in Computer Science. The record also contains a May 14, 2013, evaluation from Professor [REDACTED] an instructor with the Department of Statistics and Computer Information Systems of [REDACTED] and a professor with the School of Business of the [REDACTED] Mr. [REDACTED] evaluation concludes that the beneficiary's Master of Computer Applications degree equates to a U.S. Master of Science degree in Computer Science.<sup>7</sup>

While the three evaluations of the beneficiary's educational qualifications conclude that his Master of Computer Applications degree from India equates to or is substantially similar to a U.S. Master's degree in Computer Science, the question remains as to whether the beneficiary's field of study is sufficient to meet the terms of the labor certification. In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must look to 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 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 (1<sup>st</sup> Cir. 1981). The report from AACRAO EDGE, upon which the director based his decision, and which was provided to the petitioner in our RFE, also concludes that the beneficiary's Master of Computer Applications degree is "comparable to a master's degree in the United States."<sup>8</sup> However, whether this degree fulfills the

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<sup>7</sup> The petitioner also submits an evaluation of the foreign educational credentials of another person, not the beneficiary. The August 1, 2012, evaluation is by [REDACTED] for [REDACTED]. This issue was noted in our NOID. We will not consider this evaluation to have evidentiary weight as there was no response to the NOID, the evaluation appears to relate to another individual, not the beneficiary, and the evaluation is not otherwise discussed by the petitioner or its counsel.

<sup>8</sup> According to its website, the 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.* The EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* <http://edge.aacrao.org/info.php>. USCIS considers the EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies. *See Tisco Group, Inc. v. Napolitano*, No. 09-10072, 2010 WL 3464314, at \*4 (E.D. Mich. Aug. 30, 2010) (USCIS properly weighed the petitioner's evaluations and information from the EDGE to conclude that the beneficiary's foreign degrees were comparable only to a U.S. bachelor's degree); *Sunshine Rehab Servs., Inc.*, No. 09-13605, 2010 WL 3325442, at \*\*8-

required field of study is at issue. The EDGE report states that the Master of Computer Applications degree is “[c]omparable to a degree in computer application, not computer science.”

In response to our initial RFE, counsel for the petitioner asserted that the preponderance of the evidence demonstrates that the beneficiary completed coursework that is “substantially equivalent” to the coursework required for a U.S. Master of Science degree in Computer Science. Counsel indicates this assertion is based the finding of all three evaluations, but also states that Mr. Appel’s evaluation “is the most relevant as it addresses [the beneficiary’s] individual coursework as well as the appropriateness of USCIS’s reliance on the AACRAO EDGE evaluation as its sole piece of evidence.” Counsel asserts that the beneficiary’s Master of Computer Applications degree “is in fact equivalent to a United States Master’s Degree in Computer Science.” Counsel further states: “[t]his is not only due to the identical curriculum required by the two different programs, but also because *there is no master’s program offered by an accredited United States university that offers a degree in ‘Computer Applications.’*” (emphasis in original).

However, the record does not contain evidence to support counsel’s assertion that the beneficiary’s program’s curriculum is identical to a U.S. master’s degree in Computer Science. The record does not contain evidence from United States universities indicating what is required to obtain a master’s degree in Computer Science. Further, as noted above, the record appears to contain transcripts for the second and third year of the beneficiary’s studies at [REDACTED] however, the record does not contain a copy of the beneficiary’s transcript for the first year of study in this program. As we indicated in our NOID, we are prevented from assessing counsel’s claim without a complete copy of the beneficiary’s transcript from his master’s degree program. We also noted that, to support counsel’s claim, we would require evidence that the curriculum for a Master of Computer Applications at [REDACTED] is similar to the curriculum for a Master of Computer Science from United States universities. Because the petitioner did not respond to our NOID, there is not sufficient evidence in the record to support counsel’s claim. 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 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).

Further, the evaluation from Mr. Appel first asserts: “it is incontrovertible that [the beneficiary] fulfilled a foreign equivalent degree to a Master of Science Degree in Computer Science based on the single source of the Master of Computer Application program at [REDACTED]” Mr. [REDACTED] later states that the beneficiary “completed a two-year Master of Science program in Computer Science at

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9 (E.D. Mich. Aug. 20, 2010) (USCIS was entitled to prefer the information in the EDGE and did not abuse its discretion in concluding that the beneficiary’s three-year bachelor’s degree was not a foreign equivalent degree of a U.S. bachelor’s degree); *Confluence Int’l, Inc. v. Holder*, No. 08-2665, 2009 WL 825793, at \*4 (D. Minn. Mar. 27, 2009) (the AAO provided a rational explanation for its reliance on AACRAO information to support its decision).

[REDACTED] that the beneficiary “completed the master’s program in May, 2003, as evidenced by a final transcript issued by [REDACTED], which states that he ‘passed and obtained’ the degree.” Mr. [REDACTED] asserts that the beneficiary participated in a two-year Master of Computer Science program at [REDACTED] and obtained a degree in that field. However, the record does not contain a two-year degree in Computer Science separate from the beneficiary’s Master of Computer Applications degree. Our NOID to the petitioner outlined this inconsistency and requested clarification or evidence to support Mr. [REDACTED]’s claims. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent, objective evidence; attempts to explain or reconcile such inconsistencies, absent competent, objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). However, the petitioner did not respond or submit any evidence in response to the NOID to address these issues.

It appears from the incomplete copy of the transcript provided, dated October 21, 2003, that the statement referenced by Mr. [REDACTED] actually states the following, in approximately the formatting used below:

RESULT: PASSED AND HAS OBTAINED  
NINE HUNDRED THIRTY EIGHT MARKS

Therefore, contrary to Mr. [REDACTED]’s conclusion, the transcript referenced appears to state the number of marks the beneficiary passed, and consequently obtained. For comparison, the beneficiary’s first semester transcript from his MBA program likewise states that he “passed and has obtained five hundred and four marks.” Thus, the language “passed” refers to the completion of that transcript year, and not to the completion of a degree. This casts doubt on Mr. [REDACTED]’s claim that the beneficiary completed a two-year postgraduate course of study in Computer Science before being “admitted directly to the third year of the three-year Master of Computer Applications program.”

Mr. [REDACTED] further states: “in the Indian education system, Computer Applications is considered an elevated, or more specialized, sub-discipline of Computer Science.” The record, however, does not contain evidence that the beneficiary was awarded such a degree in Computer Science, the required and only allowed field of study in this matter. Further, the evaluation provides no reference or source for this conclusion. Our NOID requested evidence to support Mr. [REDACTED]’s statements.

## **B. Law and Analysis**

### **1. The Roles of the DOL and USCIS in the Immigrant Visa Process**

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

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

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

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

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

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).<sup>9</sup> *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.

*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

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<sup>9</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A).

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.

## 2. Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

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

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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

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

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

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

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

The labor certification states that the offered position of Capacity Planning Engineer requires a U.S. master’s degree, or a foreign equivalent degree, in Computer Science, plus 24 months of experience in

the position offered or as a software developer, performance engineer, or in a related occupation.

As noted above, the terms of the labor certification permit an applicant to qualify based on alternative experience in a related occupation; however, the petitioner did not similarly expand the alternative acceptable fields of study by which one might qualify for the position offered, despite the option to do so on ETA Form 9089. Rather, the petitioner indicated that the field of "Computer Science" was the only acceptable field of study for the position offered. Nothing qualifies or states that the petitioner will accept another field of study, or any related field of study.

Part J of the labor certification states that the beneficiary received a master's degree in Computer Science from [REDACTED] India, in 2004. However, the record on certification, including the petitioner's response to our RFE, indicates the beneficiary possesses two master's degrees, one in Business Administration, and another in Computer Applications. However, after reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate in the required field of study to qualify based on the terms of the labor certification in the matter before us.

### 3. The Minimum Requirements of the Offered Position

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the beneficiary's qualifications, USCIS must look to 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). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] 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]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires an advanced degree in the field of Computer Science. The record on certification does not establish that the beneficiary's degree in the field of Computer Applications meets the terms of the labor certification. As noted by the director and in our NOID, Computer Applications is considered to be different than and distinct from

Computer Science. The petitioner did not state that it would allow for any related fields of study. We provided the petitioner with an opportunity to document the beneficiary's eligibility for the classification sought, and to document that the beneficiary possessed a degree that met the minimum requirements of the position offered. For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses an advanced degree in the field of Computer Science, as required by the terms of the labor certification.

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

### III. CONCLUSION

This matter will be both: (1) summarily dismissed as abandoned by the petitioner; and (2) denied on the record. The decision certified by the director, which denied the petition with a finding that the petitioner failed to establish that the beneficiary possessed the minimum education required by the terms of the labor certification, will be affirmed. Each of the above stated reasons are considered as an independent and alternative basis for denial.

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 petition is summarily denied as abandoned.

**FURTHER ORDER:** The director's decision is affirmed; the petition remains denied based on the record.