



U.S. Citizenship
and Immigration
Services

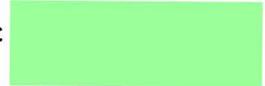
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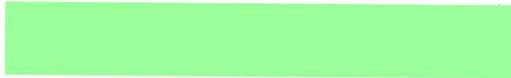
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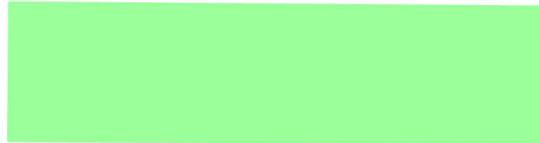


IN RE: Petitioner:
Beneficiary:



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, Texas Service Center, denied the preference visa petition. We dismissed the subsequent appeal. The matter is now before us on a motion to reopen. We will dismiss the motion, and affirm our previous decision. The petition will remain denied.

The petitioner describes itself as an auto repair business. It seeks to permanently employ the beneficiary in the United States as an [REDACTED] Vehicle Mechanic." 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).

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 regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence."

In this matter, the petitioner has presented no facts or evidence on motion that may be considered "new" under 8 C.F.R. § 103.5(a)(2) and that could be considered a proper basis for a motion to reopen. In fact, the petitioner has offered no evidence in support of its motion. The brief submitted on motion was previously presented in the prior proceeding. It is further noted that the petitioner has submitted no evidence with this motion, and the petitioner has not offered additional evidence that was originally requested by us in a notice of intent to dismiss dated March 18, 2014. As the petitioner was previously put on notice and provided with a reasonable opportunity to provide the required evidence, the petitioner's brief submitted on motion is not new and will not be considered a proper basis for a motion to reopen.

As the motion to reopen does not state new facts to be provided in the reopened proceedings and is not supported by affidavits or either documentary evidence, the motion will be dismissed.

We will nevertheless again review the merits of the petition.

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

- H.4. Education: Bachelor's degree in Electronics.
- H.5. Training: None required.
- H.6. Experience in the job offered: 60 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: None accepted.
- H.14. Specific skills or other requirements: [Blank].

Part J of the labor certification states that the beneficiary possesses a Bachelor's degree in Electronics from the [REDACTED] completed in 1994. The record contains a copy of the beneficiary's diploma from the [REDACTED] issued in 1994.

The director's decision denying the petition concluded that the beneficiary does not possess a single degree that is the foreign equivalent of a U.S. bachelor's degree and therefore does not qualify as an advanced degree professional.

On motion, counsel for the petitioner states that the beneficiary's specialist degree was "the only first degree in the former Soviet Union, was traditionally inherited from the Engineering education of [the] Russian empire, and currently is being phased out by the *bakalavr's* (Bachelor's)." Counsel further states that this degree "involves one to three years of coursework and practice, followed by a one-year internship, or practical field work." Counsel states that the United Kingdom recognizes former Soviet Specialist Diplomas and equates them to a British Bachelor (Honours) degree and requests that the U.S. Citizenship and Immigration Services (USCIS) do the same.

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.

When the beneficiary relies on a bachelor's degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the legacy INS responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990) and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily

required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."¹ In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" of a United States baccalaureate degree. See 8 C.F.R. § 204.5(k)(2).

The beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. See *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).²

In addition, a three-year bachelor's degree will generally not be considered to be the "foreign equivalent" of a United States baccalaureate degree. See *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).³ See *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree); see also *Sunshine Rehab Services, Inc. v. USCIS*, 2010

¹ Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

² Compare 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

³ In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

WL 3325442 (E.D.Mich. August 20, 2010) (the beneficiary's three-year bachelor's degree was not the foreign equivalent of a U.S. bachelor's degree).

In the instant case, the petitioner relies on the beneficiary's three-year diploma in "Installation, repair and maintenance of medical equipment" from [REDACTED], awarded in 1994, as being equivalent to a U.S. bachelor's degree. The petitioner asserts that the beneficiary's degree and his work experience being self-employed as a [REDACTED] from January 1, 1999 until July 1, 2007 qualify him as an advanced degree professional.

As noted in our previous decision, the record contains two unsigned evaluations of the beneficiary's educational credentials, each prepared by an unnamed individual, for [REDACTED]. The first evaluation, dated May 4, 2009, states that the beneficiary's diploma from the [REDACTED] is the equivalent of a U.S. master's degree. The second evaluation, dated December 18, 2012, states that that the beneficiary's diploma from the [REDACTED] is the equivalent of a U.S. bachelor's degree.⁴

We issued the petitioner a notice of intent to dismiss (NOID) on March 18, 2014, noting among other things, that these evaluations reach conflicting conclusions in that one states the beneficiary's degree is equivalent to a bachelor's degree and the other states it is equivalent to a master's degree. The response to this NOID did not address the deficiencies with these evaluations.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See <http://edge.aacrao.org/info.php>. USCIS

⁴ USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁵

As noted in our NOID, the first bachelor's degrees were awarded in Uzbekistan in 2000. The beneficiary obtained his diploma in 1994. According to EDGE, the beneficiary's three-year diploma following high school in Uzbekistan is equivalent to the completion of vocational or other specialized high school in the United States. In response to our NOID, the petitioner has not provided any other evidence to overcome these conclusions.

Counsel for the petitioner states that the beneficiary has a "Diploma of Specialist from [REDACTED], which is a three year degree."

Counsel states that EDGE and the [REDACTED] do not refer to the Russian "specialist degree." However, the beneficiary's degree in the record does not state that it is a "specialist degree," and the petitioner has not demonstrated why this degree from the "[REDACTED]" is more than a three-year degree from a vocational school following high school.

As stated above, counsel states that the United Kingdom recognizes former Soviet Specialist Diplomas and equates them to a British Bachelor (Honours) degree and asserts that the USCIS should do the same. As stated above, the record reflects that the beneficiary's diploma was awarded after three years of education. Nothing in the record reflects that this three-year program is equivalent to a four-year bachelor's degree. A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977).

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree.

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, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary

⁵ In *Confluence International, Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

As noted in our previous decision and 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, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

he petitioner must also 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 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). Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

In the instant case, the labor certification states that he offered position requires five years of experience in the job offered as an [REDACTED] vehicle transport.

As noted in our previous decision, the record initially contained the following experience letters:

- A letter on [REDACTED] letterhead stating that the company employed the beneficiary as a motor mechanic from October 14, 2003 until June 1, 2007.
- A letter from the manager of [REDACTED] Israel, stating that the beneficiary was employed there as a mechanic specialist from April 25, 1999 until December 15, 2002.

As noted in our NOID, each of these periods of employment overlaps with the beneficiary's self-employment as a repair tech specialist in [REDACTED] from January 1, 1999 until July 1, 2007. In response to our NOID, the petitioner submitted a letter from a Cellular Lab Team Leader for [REDACTED] stating that the beneficiary worked under his supervision as a cellular lab technician from October 2000 until June 2005. Thus, it appears that the beneficiary had two full-time jobs during the time he was self-employed as a repair tech specialist in [REDACTED]. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). It is

incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.*

Our NOID also addressed the fact that the record contains a 2008 tax return in the name of [REDACTED] and tax returns for 2008 and 2009 in the name of [REDACTED]. A search of the New York State Department of State Division of Corporations indicates that [REDACTED] was incorporated on January 5, 2007 and is currently active, and [REDACTED] was dissolved on May 5, 2010. It is unclear why the labor certification states that the beneficiary worked for [REDACTED] instead of [REDACTED]. The petitioner did not submit any evidence to resolve these discrepancies in response to our NOID.

Therefore, the submitted experience letters do not establish that the beneficiary possessed the required experience for the offered position. The petitioner did not address this issue on motion.

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.

As the motion to reopen does not state new facts to be provided in the reopened proceedings and is not supported by affidavits or either documentary evidence, the motion must be dismissed. Further, as summarized above, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. 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.

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 motion to reopen is dismissed.