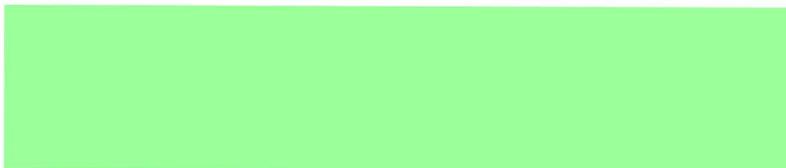




U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: **JAN 03 2014** OFFICE: NEBRASKA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a software development and consulting business. It seeks to employ the beneficiary permanently in the United States as a Computer Software Engineer, Applications. 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).

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).¹ The priority date of the petition is January 20, 2012, the date on which DOL accepted it for processing. See 8 C.F.R. § 204.5(d).

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.² The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.³ A petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision.⁴

The issue in this case is whether the beneficiary possesses the advanced degree required by the terms of the labor certification and the requested preference classification.

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

- H.4. Education: Bachelor's.
- H.4-B. Major field of study: Computer Science.
- H.5. Training: None required.

¹ 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).

² See 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

³ The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, 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).

⁴ See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

- H.6. Experience in the job offered: Required.
- H.6-A. 60 months.
- H.7. Alternate field of study: Accepted.
- H.7-A. Major field of study: Electronics, Mathematics, any field of Engineering, Business Administration
- 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. 60 months.
- H.10-B. Job title of alternate occupation: Programmer Analyst; Systems Analyst; Consultant; Program Manager, Lead.
- H.14. Specific skills or other requirements: Relocation to various unanticipated client sites throughout the U.S. for periods of six months to two years required.

Part J of the labor certification states that the beneficiary possesses a Master's degree from [REDACTED] [REDACTED] completed in 2002. The record contains a copy of the beneficiary's Master of Computer Application and transcripts from [REDACTED] [REDACTED] issued October 4, 2003, which indicate that the beneficiary passed the examination for his degree in June 2002.

The record also includes: a copy of the beneficiary's Post Graduate Diploma (PGD) in Business Administration awarded by the [REDACTED] on January 31, 2006; copies of the beneficiary's academic transcripts and 1999 Bachelor of Arts degree from the [REDACTED] and a copy of a certificate issued to the beneficiary in 2008 by the [REDACTED] [REDACTED] awarding him the global credential of [REDACTED] with an expiration date of December 6, 2011.

The record also contains evaluations of the beneficiary's educational credentials prepared by [REDACTED] dated November 30, 2012; [REDACTED] dated November 24, 2009; [REDACTED] [REDACTED] dated October 17, 2012; [REDACTED] [REDACTED] dated September 13, 2013; and [REDACTED] [REDACTED] dated September 13, 2013.

The director denied the visa petition after concluding that the beneficiary's Master of Computer Application was not in a field of study allowed by the labor certification. The director also found that as the PGD issued to the beneficiary in business administration had not been awarded by an accredited university, he could not qualify for preference classification as a professional on this basis. The director further concluded that the beneficiary's bachelor's degree from the [REDACTED] [REDACTED] was not the foreign equivalent of a U.S. bachelor's degree as it had been awarded after three years of study rather than the four years of study required for a U.S. baccalaureate.

On appeal, counsel for the petitioner contends that the beneficiary holds the equivalent of a U.S. Master's degree in Computer Science and that he, therefore, more than meets the academic requirements of the labor certification. She further asserts that United States Citizenship and Immigration Services (USCIS) has exceeded "its area of presumed administrative jurisdiction" in finding that the beneficiary does not hold the degree required by the labor certification. She contends that USCIS has refused to accept evidence in the form of expert opinions submitted by the petitioner that clearly establish that the beneficiary holds the equivalent of a U.S. Master of Science in Computer Science and that such action jeopardizes the integrity of the I-140 process by "minimizing and neglecting the Petitioner's role as well as the role of experts providing Expert Opinion Reports in the process." By its actions, USCIS, counsel asserts, has abused its discretion and exceeded its authority, issuing a decision that favors its unauthorized and unqualified interpretation of the labor certification requirements over the employer's intent and critical role in the process."

The Roles of DOL and USCIS in the Immigrant Visa Process

In light of counsel's concerns regarding what she has characterized as an overreaching adjudication of the instant petition, the AAO will first review the respective roles of DOL and USCIS in the employment-based immigrant visa process. As noted above, the underlying labor certification in this matter is certified by DOL and 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 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

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to make the two determinations listed in section 212(a)(14).⁵ *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 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:

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

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.

To determine whether the beneficiary is qualified for the offered position, USCIS examines the requirements set forth in the labor certification.

The Minimum Requirements of the Offered Position

A petitioner must establish that the beneficiary has 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. 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).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS

cannot and should not reasonably be expected to look beyond the plain language of the labor certification. 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 present case, the labor certification requires the beneficiary to possess the minimum of a U.S. Bachelor's degree or a foreign equivalent degree in Computer Science, Electronics, Mathematics, any field of Engineering, or Business Administration. Additionally, he must have five years of progressively more responsible experience as a Computer Software Engineer, Applications; Programmer Analyst; Systems Analyst; Consultant or Program Manager, Lead.

As previously indicated, the record establishes that the beneficiary holds a three-year Bachelor of Arts degree from the [REDACTED] completed in 1999 and a Master of Computer Application from [REDACTED] completed in 2002, which the petitioner asserts is the foreign equivalent of a U.S. Master of Science in Computer Science. It also documents that he has a Postgraduate Diploma (PGD) in Business Administration from the [REDACTED], completed in 2005.

To establish the beneficiary's degree as a Computer Science degree, the petitioner, as noted above, has submitted reports from several evaluators. In a November 24, 2009 statement, [REDACTED] indicates that he has reviewed the beneficiary's Master of Computer Application degree from [REDACTED] and his Bachelor of Arts degree from the [REDACTED] and that he finds the beneficiary to have achieved "the equivalent in level, scope and intent of a Master of Computer Science Degree at a regionally accredited university in the United States." An October 17, 2012 evaluation from [REDACTED] concludes that the beneficiary's Bachelor of Arts degree, his Master of Computer Application from [REDACTED] and his PGD in Business Administration and Marketing⁶ from the [REDACTED] provide him with the equivalent of a U.S. Master of Science degree in Computer Information Systems and a Bachelor of Business Administration, with a concentration in marketing, from an accredited U.S. university.

The record also includes a November 30, 2012 evaluation provided by [REDACTED] who finds the beneficiary to have completed six years of progressive education, culminating in a Master of Computer Application. [REDACTED] states that he finds the courses in the beneficiary's Master's program to be analogous to those comprising Masters' programs in Computer Science at accredited U.S. institutions and that the beneficiary has fulfilled the foreign equivalent of a two-year U.S. Master of Science in Computer Science. In support of his conclusions, [REDACTED] compares the courses that he indicates are generally found in the curricula of U.S. Masters' programs in Computer Science to

⁶ The beneficiary's PGD reflects that his program at [REDACTED] was in Business Administration alone.

those in the Master of Computer Application program completed by the beneficiary at [REDACTED]

In a Request for Evidence (RFE) issued on August 22, 2013, the AAO discussed the preceding evaluations, finding none to establish that the beneficiary's Master of Computer Application was the foreign equivalent of a U.S. Master's degree in Computer Science. In the RFE, the AAO indicated that it had consulted the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁷ While the AAO noted that EDGE reported that a three-year Bachelor of Arts degree from India was comparable to "three years of university study in the United States" and that a Master of Computer Application (MCA) represented the "attainment of a level of education comparable to a master's degree in the United States," it also indicated that the database described a Master of Computer Application as comparable to a Master's degree in Computer Applications, not Computer Science. Additionally, the AAO's review of EDGE's discussion of Indian Postgraduate Diplomas found it to indicate that although a Postgraduate Diploma following a three-year bachelor's degree represented the attainment of a level of education comparable to a U.S. Bachelor's degree, the Postgraduate Diploma "should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE)." As the record in the present case did not establish that the [REDACTED] was accredited by AICTE or that it required a three-year bachelor's degree for admission, the RFE informed the petitioner that the beneficiary's Postgraduate Diploma did not demonstrate that he held the foreign equivalent of a U.S. Bachelor's degree in Business Administration.

The RFE further notified the petitioner that [REDACTED] conclusions regarding the comparability of the beneficiary's Master's degree to a U.S. Master's degree in Computer Science appeared to have been based on his review of the curriculum described in the [REDACTED] taught at [REDACTED] rather than the coursework completed by the beneficiary at the [REDACTED], an affiliated academic institution. Accordingly, the AAO informed

⁷ According to its website, www.aacrao.org, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php>. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

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the petitioner that it did not find [REDACTED]'s evaluation to reflect an accurate characterization of the beneficiary's education.

In response to the RFE, counsel for the petitioner asserts that the AAO, by focusing on the title of the Master's degree held by the beneficiary, has erred in concluding that the evaluation prepared by [REDACTED] does not reflect an accurate characterization of the beneficiary's education. She contends that a review of the courses taken by the beneficiary establishes that he has completed a majority of the courses required by a U.S. Master's program in Computer Science. She further states that USCIS has ignored the fact that a degree in Computer Application is not offered by U.S. universities and that the closest equivalent is a degree in Computer Science. Counsel submits two additional evaluations of the beneficiary's education, both dated September 13, 2013, to demonstrate his academic qualifications for the offered position.

The first of these opinions is from [REDACTED] finds that the beneficiary has attained the foreign equivalent of a two-year Master of Science in Computer Science from an accredited U.S. university, basing this conclusion on the Master of Computer Application program completed by the beneficiary at [REDACTED] which followed a three-year bachelor's degree. Ms. [REDACTED] notes that the curriculum completed by the beneficiary for his Master's degree is comparable to the courses found in graduate Computer Science programs at many U.S. colleges and universities.

Finding the AAO's reading of EDGE to be incorrect, Ms. [REDACTED] contends that the EDGE database does not support a finding that the beneficiary's Master's degree is the equivalent of a U.S. Master of Science Degree in Computer Applications, but, instead, confirms her determination that he holds the foreign equivalent of a Master of Science in Computer Science. Ms. [REDACTED] notes that EDGE's use of the term "computer application" refers to computer fields that involve the practical application of theoretical computer knowledge, including computer information systems or management information systems and also states that in the U.S. educational system today, the study of Computer Science is "generally considered more theoretical than these fields, involving studies in computational mathematics, with a more central focus in academia, as opposed to professional industry." However, she asserts that the beneficiary's major does not exist in the United States, that virtually no accredited college or university in the United States offers a Master's program in Computer Applications, that a Computer Application degree "carries a different connotation in the Indian educational system than it does in the US educational system," and that "Computer Science is a major that includes the study of computer applications and accurately captures the field of study completed by [the applicant]. Therefore, based on her review of the content of the courses taken by the beneficiary, the reputation of [REDACTED] the beneficiary's coursework and research, the nature of that coursework and research, the grades attained by the beneficiary and the "view of AACRAO EDGE," Ms. [REDACTED] finds the beneficiary to have surpassed the labor certification's requirement of a Bachelor's degree in Computer Science and that he holds a foreign degree that is analogous to a U.S. Master's degree in Computer Science.

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The second evaluation submitted by the petitioner, signed by [REDACTED] also concludes that the beneficiary holds the foreign equivalent of a Master of Science in Computer Science. He finds the EDGE database's comparison of the Master's degree earned by the beneficiary to a U.S. Master's degree in Computer Applications to be in error as a Master's degree in Computer Applications does not exist in the United States.

Dr. [REDACTED] notes that entrance to the beneficiary's Master of Computer Application program required his completion of a bachelor's degree and competitive entrance examinations, and that, as it required three years of study, provides the beneficiary with "a unique and prestigious credential." He states that the courses completed by the beneficiary were "widely based in the broad field of Computer Science and . . . not limited to the narrower field of Computer Applications." Dr. [REDACTED] concludes "[i]ndeed, none of the courses . . . would qualify as courses in Computer Applications; instead, these courses all would lie within the broader field of Computer Science."

In support of his statements, Dr. [REDACTED] compares the coursework completed by the beneficiary to the curricula, he states, is generally taught in graduate Computer Science programs at U.S. universities, and finds the beneficiary's courses to satisfy the academic requirements for a U.S. Master's degree in Computer Science. He submits printouts of the curricula and/or descriptions of the Masters' programs in Computer Science at the University of Michigan, University of Pennsylvania, Purdue University, the University of Chicago and North Carolina State University.

In response to counsel's assertions that it erred in questioning the evaluation prepared by [REDACTED] the AAO has again reviewed his November 30, 2012 opinion, but has reached the same conclusions regarding its reliability. While [REDACTED] indicates that he has conducted a comparison of the coursework completed by the beneficiary for his Master of Computer Application degree with that required by U.S. Masters' programs in Computer Science, the courses he lists under the title "Analogous Courses Found in [the applicant's] Master of Computer Applications Program" were not completed by the beneficiary, but reflect the curriculum of the [REDACTED], taught at the [REDACTED]. Although the titles of some of the courses listed by Professor Appeal appear similar to the courses that appear on the beneficiary's transcript, others have titles that appear only in the [REDACTED], which was submitted by [REDACTED] in support of his evaluation, e.g., "Simulation & Modeling," "Compiler Construction," and "Software Verification, Validation & Testing." Accordingly, the AAO finds that [REDACTED] evaluation of the beneficiary's Master of Computer Application degree is based on the wrong curriculum and cannot be used to establish that the beneficiary holds the foreign equivalent of a U.S. Master of Science in Computer Science. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight." *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

[REDACTED] failure to analyze the appropriate curriculum in his academic evaluation also leads the AAO to discount his assertion that his analysis of the beneficiary's education should supersede the

EDGE equivalency recommendation regarding the Indian Master of Computer Application. Doubt cast on any aspect of a petitioner's proof 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).

The most recently submitted evaluations of the beneficiary's academic qualifications also fail to overcome EDGE's conclusion that an Indian Master of Computer Application is not the foreign equivalent of a U.S. Master's degree in Computer Science. Although Ms. [REDACTED] asserts that the term "computer application" has a different connotation in the Indian educational system than it does in the United States, she also acknowledges that the curricula in some computer applications programs in India may not be comparable to a U.S. major in computer science, but may be closer to computer fields such as computer engineering, computer information systems or information science, i.e., fields involving the application of computer science. No evidence in the record, however, e.g., articles or statements from Indian authorities or institutions, including the [REDACTED] or [REDACTED] supports Ms. [REDACTED]'s assertion that the field of computer applications is understood differently in India than in the United States. The AAO also finds no evidence that distinguishes the curriculum studied by the beneficiary at the [REDACTED] from other computer applications programs in India's educational system that Ms. [REDACTED] indicates may not provide Masters of Computer Application degrees that are the same as or similar to a U.S. Master of Science in Computer Science.

Ms. [REDACTED] evaluation is also inconsistent with that previously provided by [REDACTED] although counsel presents Ms. [REDACTED] opinion as an expanded version of this earlier report. As previously discussed, the initial evaluation, prepared by [REDACTED] found the beneficiary to hold the equivalent of a U.S. Master of Science in Computer Information Systems, a field of computer study that Ms. [REDACTED] evaluation has characterized as a Computer Applications degree rather than a degree in Computer Science. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or given less weight." *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Accordingly, the AAO does not find Ms. [REDACTED] evaluation to establish that the beneficiary's Master of Computer Application is the foreign equivalent of a U.S. Master's degree in Computer Science.

The AAO has also considered Dr. [REDACTED] evaluation, which finds the courses completed by the beneficiary at the [REDACTED] to lie within the field of Computer Science, as well as the printouts he has submitted from the websites of the University of Pennsylvania, the University of Michigan, the University of Chicago, Purdue University and North Carolina State University in support of his opinion. However, while the AAO acknowledges Dr. [REDACTED] assessment of the beneficiary's academic credentials, it does not find it to be supported by the submitted materials.

The printout from the Graduate Handbook of the University of Pennsylvania's (UPenn's) Department of Computer & Information Science states UPenn requirements for four Masters' degrees: Master of Science in Engineering in Computer & Information Services (CIS/MSE), Master of Computer and

Information Technology (MCIT), Master of Science in Engineering in Computer Graphics and Game Technology (MSC/CGGT) and Master of Science in Engineering in Embedded Systems. While the AAO finds similarities between the courses taken by the beneficiary and those indicated as requirements in the CIS/MSE program, it finds a greater commonality between the courses taken by the beneficiary at the [REDACTED] and those required for a MCIT at UPenn, a field of study involving the practical application of computer knowledge.

Dr. [REDACTED] has also submitted copies of the overview of selected courses offered by the Department of Electrical Engineering and Computer Science at the University of Michigan, the listings of computer science courses at North Carolina State University and the graduate courses in computer science offered by the College of Science at Purdue University. However, this material does not indicate the requirements of Masters' programs in computer science at these universities. As all three universities, like UPenn, offer Masters' degrees in fields of computer-related study other than Computer Science, e.g., Information Technology and Computer Networking,⁸ the submitted listings appear to identify courses that support several degree programs, not just that in Computer Science. Accordingly, they do not demonstrate that the academic requirements completed by the beneficiary at the [REDACTED] are those generally required by U.S. Masters' programs in Computer Science.

The AAO does, however, acknowledge the overall similarity between the content of the beneficiary's coursework and the submitted curriculum for the Master's program in Computer Science at the University of Chicago, which describes itself as having a "strong emphasis in applied topics." However, the AAO does not find the common elements in the curriculum completed by the beneficiary and that of the Master's program in Computer Science at the University of Chicago to overcome the finding in EDGE that an Indian Master of Computer Application is not comparable to a U.S. Master of Science in Computer Science but to a U.S. Master's degree in a computer field that involves the practical application of computer knowledge. The similarities between the beneficiary's coursework and a single U.S. Master's program in Computer Science are not sufficient to demonstrate, as asserted by Dr. [REDACTED], that the beneficiary has completed the curricula generally taught in graduate Computer Science programs at U.S. universities.

Moreover, Dr. [REDACTED] assertion that EDGE has erred in finding the Indian Master of Computer Application degree to be comparable to a U.S. Master's degree in computer application because a Master's degree in computer application does not exist in the United States is not persuasive. As acknowledged by Ms. [REDACTED] in her evaluation, EDGE's use of the term "computer application" reflects a range of computer degrees that involve the practical application of the principles of computer science, rather than a specific degree program. Accordingly, the AAO finds EDGE to indicate that the beneficiary's Master of Computer Application is comparable to U.S. Masters' degrees in Management Information Systems; Computer Information Systems, the equivalency cited by [REDACTED] in

⁸ See <http://www.engin.umd.umich.edu/CIS/gradprog/index.php?act=showhtml&ATTID=41>; see also <http://www.csc.ncsu.edu/academics/graduate/degrees/mcs.php>; and <https://tech.purdue.edu/degrees/ms-computer-and-information-technology/> (accessed November 15 and 18, 2013).

the initial [REDACTED] evaluation of the beneficiary's education; or Information Technology, which, as taught at UPenn, has a curriculum similar to that completed by the beneficiary.

Based on the record before it, the AAO does not find the petitioner to have established that the beneficiary's degree from [REDACTED] is the foreign equivalent of a U.S. Master of Science in Computer Science. Neither has the petitioner demonstrated that the beneficiary holds the foreign equivalent of a U.S. Bachelor's degree in the alternate fields of Electronics, Mathematics, Engineering or Business Administration. Accordingly, the petitioner has not demonstrated by a preponderance of evidence that the beneficiary holds the degree required by the labor certification. Therefore, it has also failed to establish that the beneficiary is eligible 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. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.