

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



U.S. Citizenship
and Immigration
Services



DATE: **JAN 30 2014** OFFICE: TEXAS 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)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner seeks to employ the beneficiary permanently in the United States as a physical therapist, pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The director denied the petition concluding that the "beneficiary does not meet the education requirement of the ETA-9089" and that "the beneficiary is ineligible for the classification as a member of the professions holding an advanced degree."

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

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

On appeal, counsel submitted a statement and additional evidence. On June 20, 2013, the AAO issued a notice of intent to dismiss the appeal (NOID) in accordance with the regulation at 8 C.F.R. § 103.2(b)(16). The NOID advised the petitioner and counsel, in part, of information which was not consistent with a conclusion that the beneficiary's bachelor's degree in physical therapy is the foreign equivalent of a U.S. master's degree in physical therapy. In response, counsel submitted (1) an additional statement, (2) a letter dated July 16, 2013 from the evaluator, (3) a printout of the state of Maryland physical therapist licensing requirements, and (4) copies of two non-precedent AAO decisions.

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

I. LAW

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

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

- (A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

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

The regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as:

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

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

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

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

II. ANALYSIS

In the instant petition, the petitioner does not claim, nor does the record establish, that the beneficiary has at least five years of experience following a U.S. baccalaureate degree or a foreign equivalent degree. Therefore, in order to be eligible for the requested classification as a member of the professions holding an advanced degree, the petitioner must establish that the beneficiary possesses a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate.

The beneficiary's eligibility to practice in the United States is not at issue. Similarly, that the beneficiary possesses the necessary credentials for licensure is also not an issue. The petitioner must establish, however, that the beneficiary not only is a member of the professions holding an advanced degree, but also satisfied all of the educational, training, experience and any other requirements of the offered position as of the priority date. 8 C.F.R. §§ 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg'l Comm'r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the job offer portion of the ETA Form 9089 to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Chertoff*, No. CV-06-65.MO, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

On the ETA Form 9089, Part H, the petitioner indicated that a master's degree in physical therapy or a foreign educational equivalent is required for the job. The petitioner further indicated that an alternate combination of experience and education is not acceptable. Thus, the petitioner must establish that the beneficiary meets the minimum education requirement of the offered position by virtue of her degree alone.

The petition included a copy of the beneficiary's Bachelor of Science in Physical Therapy degree and transcript from [REDACTED] in [REDACTED] a "Comprehensive Credential Evaluation Certificate" (evaluation) dated July 8, 2009 from the [REDACTED] and a "Report of Evaluation of Educational Credentials" (report) from [REDACTED] dated July 2, 2009. The [REDACTED] report states that the beneficiary's degree program consisted of four years of "[c]lassroom time" and ten months of "[c]linical time" and that the school "is comparable to a regionally accredited college or university in the U[nited] S[tates]." The report also states that the program's admission requirement is the equivalent of a diploma from a U.S. high school. The report found that the beneficiary's "education is substantially equivalent to the first professional degree in physical therapy in the United States." In addition, the report lists the beneficiary's date of graduation as April 6, 2002, and confirms that the beneficiary was initially licensed in the [REDACTED] on February 27, 2009.

In a letter dated February 19, 2009, [REDACTED] Managing Director of Credentialing Services at [REDACTED] explained that, in 2001, the Commission on Accreditation in Physical Therapy Education (CAPTE) discontinued the accreditation of baccalaureate degree programs in the United States. Dr. [REDACTED] further explained that U.S. accredited programs have converted to post-baccalaureate programs. Dr. [REDACTED] concluded that the current first professional degree in the United States is at least a master's degree or higher.

In response to the director's request for evidence, the petitioner submitted a revised report from [REDACTED] dated August 3, 2011. The report states that it was "revised to reflect the master's degree standard." The revised report states that the beneficiary's "education is substantially equivalent to the first professional degree in physical therapy in the United States at the time of graduation. The first professional degree in physical therapy is the master's degree or higher." The report does not address the fact that the beneficiary commenced her degree program in 1997, prior to CAPTE's decision to cease accreditation of baccalaureate degree programs.

According to the [REDACTED] evaluation, "the applicant's studies do meet the minimum of 150 semester credits that is required for a master's degree in the United States." The reports and evaluation state that "sixty (60) semester credits in general education" and "ninety (90) semester credits in professional education" are the minimum requirements, along with a "required period of fulltime internship." They also note that the beneficiary earned an additional 6 credits during the course of her degree studies.

In its NOID, in addition to providing the information below, the AAO explained that neither the [REDACTED] reports nor the evaluation provide a basis for the statement that 150 semester credits is the minimum required for a U.S. master's degree in physical therapy. In response, the petitioner submitted a July 16, 2013 letter from Dr. [REDACTED] who states: "[REDACTED] role is to determine substantial equivalency to the minimum requirement for a U.S. entry-level master's degree" and that "there is support from multiple sources for the conclusion that 150 credit hours is the appropriate measure for such a degree." The letter further cites the U.S. Department of Education (DOE), Institute of Educational Sciences, Publication from the National Center for Education Statistics: *Digest of Education Statistics 2006, Appendix B: Definitions*, as well as data from the most recently available edition of *The American Physical Therapy ("APTA") Fact Sheet, 2009-10*.

The petitioner failed to provide copies of either of Dr. [REDACTED] sources. 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)).¹

¹ An online search for the documents Dr. [REDACTED] references only yielded the 2006 *Digest of Education Statistics*. *Appendix B* states that a bachelor's degree "requir[es] at least 4 years (or equivalent) of full-time college-level study. This includes degrees granted in a cooperative or work-study program." (Emphasis added.) In other words, a bachelor's degree may, in some cases, require more than 120 semester credits and include "co-operative or work-study programs," such as the beneficiary's ten month clinical program.

As stated in the AAO's NOID, page iv of CAPTE's *Evaluative Criteria PT Programs* (November 2013), currently available for download online at <http://www.capteonline.org/AccreditationHandbook/>, states that "[o]n average, DPT [Doctor of Physical Therapy] programs require 234 credits (116.4 preprofessional, 118.3 professional; 94.3 classroom/lab, 24 clinical education), which is 31.9 more credits than master's programs." Therefore, according to CAPTE, the average master's program in physical therapy requires 202.1 credits. In addition, the DOL's *Occupational Outlook Handbook* (OOH), available at <http://www.bls.gov/ooh/>, stated, as of June 18, 2013, that doctoral programs in physical therapy are typically three years, with a master's program requiring two to three years of study.²

In her July 2013 letter, Dr. [REDACTED] states that "[t]here is no basis, however, for using an 'average' calculation to set the minimum threshold for educational equivalency" and that "[s]ome recognized U.S. programs will fall above and below this 'average.'" The AAO provided this information in the NOID to demonstrate that, according to CAPTE, the "average" master's program length in physical therapy requires 52.1 credits more than the 150 used by [REDACTED]. Furthermore, the fact that it is possible to receive a master's degree after a total of 150 semester credits, does not mean that every degree requiring at least 150 credits is above a baccalaureate.

Finally, as the petitioner's ETA Form 9089 shows that the minimum education required for the job is a U.S. master's degree in physical therapy or foreign educational equivalent, the petitioner must demonstrate that the beneficiary has a foreign educational equivalent to a U.S. master's degree in physical therapy rather than sufficient total credits for a master's degree in another field.

Counsel states that [REDACTED] [is] officially recognized by USCIS and many states as [an] acceptable source for [the] educational evaluation of foreign physical therapy degrees." The regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers, however, is for the limited purpose of overcoming the inadmissibility provision pursuant to 8 C.F.R. § 212.15(e). [REDACTED] authority, which USCIS granted pursuant to 8 C.F.R. § 212.15(e)(3), does not extend to determining whether (1) the beneficiary's education satisfies the regulatory definition of "advanced degree" or (2) the beneficiary's education satisfies the minimum requirements stated on the ETA Form 9089, the issues in the instant petition. Regardless, a credentialing organization's verification of the beneficiary's education, training, license and experience for admission into the United States is not binding on DHS. 8 C.F.R. § 212.15(f)(1)(iii).

According to the July 2013 letter from Dr. [REDACTED]

Each applicant is reviewed separately and all documentation from the post-secondary level [is] included in the review. Regardless of the individual's degree title, the curriculum followed by the individual to complete their degree, combined with

² DOL recently revised its information pertaining to physical therapists at <http://www.bls.gov/ooh/healthcare/print/physical-therapists.htm>; however, the AAO incorporated the June 18, 2013 version into the record of proceeding and provided a copy with the NOID.

additional coursework, may meet the minimum length of study and content requirements established by CAPTE for U.S. schools. Notably, in the case of the [REDACTED] all applicants from this university who have requested a credentials evaluation from [REDACTED] had completed additional post-graduate studies to supplement their initial degree, which contributed to the equivalency analysis.

The petitioner has not established how a foreign degree that [REDACTED] evaluates as a "substantially equivalent degree" to a master's degree is, in fact, a foreign equivalent degree to a U.S. master's degree. The letter also states that "[REDACTED] analysis does not examine whether a particular degree or educational institution is equivalent – rather, [REDACTED] separately evaluates the specific coursework of each individual applicant." In addition, 8 C.F.R. § 212.15(f)(i) authorizes [REDACTED] to look at all of the individual's credentials in the aggregate when it is considering the individual's suitability for health care worker certification for admissibility purposes. As [REDACTED] looks at coursework and credentials beyond the beneficiary's degree, its evaluation does not evaluate whether the beneficiary's degree from the Philippines is a single foreign equivalent degree above that of a baccalaureate, the requirement for this classification, or a single foreign equivalent degree to a U.S. master's degree in physical therapy, the degree listed on the ETA Form 9089. *See Snapnames.com, Inc.*, 2006 WL 3491005 at *11 (finding USCIS was justified in concluding that the combination of a three-year degree followed by the coursework required for membership in the Institute of Chartered Accountants of India, was not a single college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). In this matter, the beneficiary's degree in and of itself is not a foreign equivalent degree to a U.S. master's degree in physical therapy.

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

In the June 20, 2013 NOID, the AAO advised the petitioner of the information from EDGE and provided information about the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which created EDGE. The AAO provided a copy of a letter from [REDACTED] Director, AACRAO International Education Services, explaining the conclusions in EDGE. The AAO noted that USCIS considers EDGE to be a reliable source of information about foreign credential equivalencies.³ The AAO provided the petitioner with copies of all of the relevant information.

³ *See Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). *See also Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

In response, counsel asserts that the "[t]he primary reason for Director ██████ conclusion was that 'the degree is called a bachelor's degree.'" However, Mr. ██████ explained that the educational system in the Philippines is "based on the U[.]S[.] educational model...and [] employs [the same] nomenclature." Mr. ██████ further states that "[t]he master of science in physical therapy exists in the Philippines as a higher or advanced degree and it is THAT degree which would be comparable to the U[.]S[.] master's degree." Contrary to counsel's assertion that EDGE bases its determinations upon the title of the degree alone, EDGE finds that the Bachelor of Law degree in the Philippines is equivalent to "an advanced degree as in the USA."

In this case, the beneficiary's Bachelor of Physical Therapy degree would only meet the regulatory requirements for an advanced degree if the beneficiary also had five years of progressive post-baccalaureate experience. 8 C.F.R. § 204.5(k)(2). The petitioner has not asserted or demonstrated that the beneficiary had the required experience at the time the petitioner filed the petition.

The information from EDGE, AACRAO, CAPTE, and the OOH is inconsistent with a finding that the beneficiary holds the foreign equivalent of an advanced degree. It is incumbent upon the petitioner to submit relevant and probative evidence to establish the beneficiary's eligibility. *Matter of Chawathe*, 22 I&N Dec. 369, 376 (AAO 2010). Where an opinion is not in accord with other information, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.*

In response to the NOID, counsel also submitted two non-precedent AAO decisions. The regulation at 8 C.F.R. § 103.3(c) provides that only precedent decisions of USCIS are binding on all its employees in the administration of the Act. The Departments of Homeland Security and Justice must designate and publish precedent decisions in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Furthermore, the two decisions involved a different occupation. In addition, the beneficiaries in those cases obtained their degrees in a different country from the one in which the beneficiary obtained her degree. Finally, the unpublished decisions did not involve conflicting information from EDGE or any other source. Therefore, the petitioner has not established that the two non-precedent decisions are relevant to the instant petition.

Dr. ██████, in her July 2013 letter, references information in EDGE regarding the U.S. Doctor of Pharmacy degree, the master's degree in physical therapy from Poland and the "doctorate degree in physiotherapy" from "some countries in the former Soviet Union." Similar to the non-precedent decisions above, this information is not relevant because the Doctor of Pharmacy is a U.S. degree in a different field and the other degrees are from countries other than the one where the beneficiary obtained her degree.

In response to the director's request for evidence, counsel submitted printouts from the websites of licensing authorities in Massachusetts, Connecticut, and Illinois regarding the state licensing requirements for physical therapists. In response to the AAO's NOID, counsel submitted the licensing requirements for Maryland, where the beneficiary is authorized to sit for the National

Physical Therapy Exam and where the job opportunity is located, and states that "[m]ost states will not allow a foreign-educated applicant to sit for a Physical Therapy licensing exam unless the foreign-educated applicant's education has been evaluated and held to be equivalent to a U.S. [m]aster[']s degree." The submitted information, however, only confirms that the states require an evaluation from [REDACTED] or, in the case of Maryland, another "acceptable credentials agenc[y]" for licensing purposes. Ultimately, the record does not contain any evidence that Maryland, or any other state, requires a foreign-educated applicant to hold a single degree equivalent to a U.S. master's degree in physical therapy, the education requirement listed on the ETA 9089.

The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm'r 1989). If the petitioner submits relevant and probative evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)). In the instant petition, the petitioner has not submitted relevant and probative evidence that establishes by a preponderance of the evidence that (1) the beneficiary's degree is a foreign equivalent degree above that of a baccalaureate degree, as required by the classification and (2) the beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's degree in physical therapy, as required by the ETA Form 9089.

As such, the petitioner has not established that the beneficiary meets the minimum requirements set forth on the ETA Form 9089 or that the beneficiary holds an advanced degree as defined by the regulation at 8 C.F.R. § 204.5(k)(2). Therefore, the petitioner has not established that the beneficiary qualifies for classification as an advanced degree professional under section 203(b)(2) of the Act.

III. CONCLUSION

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

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the petitioner has not met that burden.

ORDER: The appeal is dismissed.