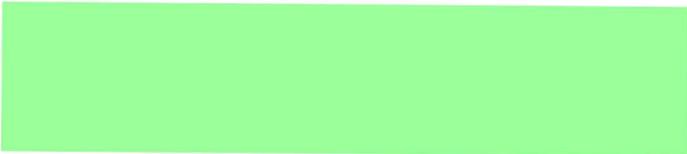


(b)(6)

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



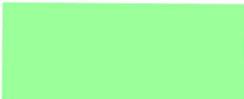
U.S. Citizenship  
and Immigration  
Services



DATE:

OFFICE: TEXAS SERVICE CENTER

FILE:

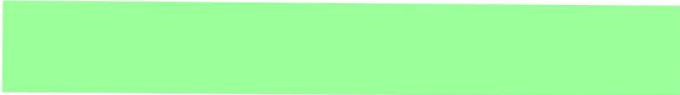


**JUN 27 2014**

IN RE:

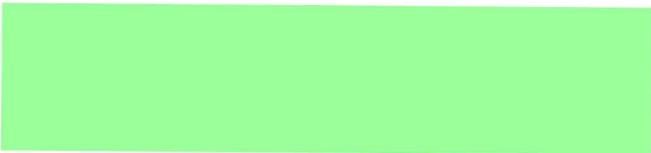
Petitioner:

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 immigrant visa petition and dismissed the petitioner's motion to reopen and reconsider. The Administrative Appeals Office (AAO) dismissed a subsequent appeal based on the petitioner's failure to submit a brief or additional evidence. Upon discovering that a brief had been submitted, the AAO subsequently reopened the matter on its own motion and issued a notice of intent to dismiss (NOID) on April 11, 2014. Upon review of the record, including the petitioner's response to the NOID, the appeal will be dismissed.

The petitioner describes itself as a manufacturer/importer of furniture. It seeks to permanently employ the beneficiary in the United States as a controller. 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 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.<sup>1</sup> The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>2</sup> 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.<sup>3</sup>

## I. 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>4</sup> The priority date of the petition is July 17, 2012.<sup>5</sup>

The required education, training, experience and skills for the offered position are set forth at Part H

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> 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).

<sup>4</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>5</sup> The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

of the labor certification. In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's.
- H.4B. Major Field of Study: Accounting.
- H.5. Training: None required.
- H.6. Experience in the job offered: 12 months.
- H.7. Alternate field of study: No.
- H.8. Alternate combination of education and experience that is acceptable: Yes.
- H.8A. If Yes, specify the alternate level of education required: Bachelor's.
- H.8C. If applicable, indicate the number of years experience acceptable in question 8: 5.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 12 months of experience as Manager-Finance & Accounting.
- H.11. Job Duties:

Responsible for the accounting operations of the company, to include the production of periodic financial reports, maintenance of an adequate system of accounting records, and a comprehensive set of controls designed to mitigate risk and enhance the accuracy of the company's reported financial results. Research and resolve international accounting, tax, and financing issues. Provide assistance needed for annual audit of company accounts and financial transactions to ensure compliance with state and federal requirements and statutes. Manage the budget.
- H.14. Specific skills or other requirements: Applicants with any suitable combination of training, education or experience are acceptable.

\*With Reference to 8-A and 8-C: Bachelor's degree in Accounting or its academic equivalence and 5 years of progressive experience will substitute for Master's degree in Accounting.

Part J of the ETA Form 9089 indicates that the beneficiary's highest level of education is a Bachelor's degree in Accounting conferred in 1989 by the [REDACTED]

The record contains copies of the beneficiary's educational credentials as follows:

1. A copy of a diploma and marks sheets showing that the beneficiary completed a three-year course of study at the [REDACTED] in 1989 and received a Bachelor of Commerce. The marks sheets indicate that the beneficiary completed a number of courses in accounting.
2. A copy of a certificate from [REDACTED] [REDACTED] stating that the beneficiary passed the Final Examination in December 1989.

The petitioner submitted two credentials evaluations. [REDACTED] of [REDACTED]

authored an evaluation dated January 15, 1999. Ms. [REDACTED] determines that the beneficiary's Bachelor of Commerce from the [REDACTED] is the U.S. equivalent of three years of undergraduate baccalaureate credit toward a U.S. degree in Business Administration. She also states that the beneficiary has a certificate of membership as an Associate in the [REDACTED] that was issued on July 19, 1993 and that "[t]ogether, Mr. [REDACTED] Bachelor of Commerce and [REDACTED] Associateship are comparable to a U.S. Bachelor of Business Administration with a major in accounting."

The record also contains an evaluation from Morningside Evaluations and Consulting, dated April 12, 2013, written by [REDACTED]. Mr. [REDACTED] initially states that the combination of the beneficiary's Bachelor of Commerce degree and the passage of the [REDACTED] final examination signified by the final examination certificate, indicates that the beneficiary "has satisfied equivalent requirements to the completion of a Bachelor of Business Administration degree from an accredited institution of higher education in the United States." Mr. [REDACTED] also describes the beneficiary's work experience (using a formula equating three years of experience to one year of university study) as representing university-level training in business administration.<sup>6</sup> He then concludes that combining the beneficiary's Bachelor of Commerce, the [REDACTED] program, as well as the beneficiary's experience, the beneficiary has achieved "at least" a Bachelor of Science in Business Administration with a Concentration in Accounting." Mr. [REDACTED] does not mention any associate membership in [REDACTED] held by the beneficiary.

U.S. Citizenship and Immigration Services (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)).

The director denied the petition, concluding that the beneficiary does not have a U.S. advanced degree or foreign equivalent degree as required by the terms of the labor certification. The petitioner, through counsel, filed an appeal, asserting that the beneficiary's three-year Bachelor of Commerce from the [REDACTED] in combination with his passage of the [REDACTED] Final Examination and Associate Membership, has a bachelor's degree and together with five years of progressive experience, meets the advanced degree professional visa classification requirements.

As noted above, we reopened the case and issued a NOID on April 11, 2014. In the NOID, we advised that 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, [www.aacrao.org](http://www.aacrao.org), AACRAO is "a nonprofit, voluntary, professional association of more

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<sup>6</sup>The rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5).

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> (accessed June 25, 2014). 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> (accessed June 25, 2014). 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.<sup>7</sup> 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.<sup>8</sup>

EDGE provides that a three-year [REDACTED] Bachelor of Commerce degree “represents attainment of a level of education comparable to two to three years of university study in the United States. Credit may be awarded on a course-by-course basis.” EDGE describes the associate membership in [REDACTED] as a professional qualification awarded upon passing the [REDACTED] Final Exam and regards the passage of the [REDACTED] final examination and the associate membership as comparable to a bachelor’s degree. As stated in this decision, however, this combination of credentials does not comply with the regulatory requirements of a second preference advanced degree professional.

In response, counsel provided evidence that the beneficiary holds an associate membership in [REDACTED] and reiterates his assertion that the beneficiary meets the requirements of the labor certification and the second preference visa classification through his education and associate membership in [REDACTED]

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<sup>7</sup> See *An Author's Guide to Creating AACRAO International Publications* available at [http://www.aacrao.org/Libraries/Publications\\_Documents/GUIDE\\_TO\\_CREATING\\_INTERNATIONAL\\_PUBLICATIONS\\_1.sflb.ashx](http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx).

<sup>8</sup> In *Confluence Intern., 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 alien’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.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, 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 itself required a degree and did not allow for the combination of education and experience.

## II. LAW AND ANALYSIS

### **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

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

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:

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.

### **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.

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, 101<sup>st</sup> Cong., 2<sup>nd</sup> 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.<sup>10</sup> 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.”<sup>11</sup> In order to have experience and

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<sup>10</sup>The court found in favor of the petitioner regarding the education requirement issue relevant to the “skilled worker” classification.

<sup>11</sup> 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

education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is a "foreign equivalent degree" to a United States baccalaureate degree. See 8 C.F.R. § 204.5(k)(2).

Thus, the plain meaning of the Act and the regulations is that the beneficiary of an advanced degree professional petition must possess, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree.

In the instant case, the petitioner relies on the beneficiary's three-year Bachelor of Commerce, passage of final exam and associate membership in [REDACTED] as being equivalent to a U.S. bachelor's degree.

In response to our NOID, counsel asserts that the *Snapnames* decision is inapposite to the present case. Counsel is correct that *Snapnames* is not a precedential decision, but we find that it does offer some guidance. In *Snapnames*, the petitioner sought three different visa classifications on behalf of the alien: (1) "skilled worker" under 8 U.S.C. § 1153(b)(3)(A)(i), (2) "professional" under 8 U.S.C. § 1153(b)(3)(A)(ii), and (3) "member [ ] of the professions holding advanced degrees" under 8 U.S.C. § 1153(b)(2)(A). The alien in that case held a three-year [REDACTED] Bachelor of Commerce degree and membership in the [REDACTED]. The court found that the AAO had properly concluded that "B.S. or foreign equivalent" expressed in the labor certification related to a specific level of educational background not work experience. The court reversed the AAO's determination that a single degree was required for the skilled worker visa classification. However, it determined that the agency's single-degree interpretation in relation to the professional and advanced degree professional visa classifications was perfectly consistent with the agency's interpretation of its statute and regulation and that it did not error in concluding that the alien's membership in the [REDACTED] was not a college or university "degree" for purposes of these two classifications.

Counsel also contends that *Snapnames* never defined what constitutes an academic institution. We concur with this statement, however we find that 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." We 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 (3<sup>rd</sup> Cir. 1995) per *APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is

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classification sought in this matter do not contain similar language.

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).<sup>12</sup>

As explained above, for classification as an advanced degree professional, the beneficiary must possess a foreign degree from a college or university that is equivalent to a U.S. bachelor's degree. While EDGE concludes that the beneficiary's passage of the final exam and associate membership in [REDACTED] is "comparable to" a U.S. bachelor's degree, it is not a degree from a college or university. The [REDACTED] is not an institution of higher education that can confer a degree. Therefore, the beneficiary possesses the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(k)(2).

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. The director's decision denying the petition is affirmed.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>12</sup> 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").