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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

[Redacted]

DATE: OFFICE: NEBRASKA SERVICE CENTER

IN RE: **MAR 13 2014**

[Redacted]

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:

[Redacted]

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, 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 is a professional health care provider. It 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 petitioner asserts that the beneficiary qualifies for blanket labor certification pursuant to 20 C.F.R. § 656.5, Schedule A, Group I. As required by statute, an uncertified Form ETA 9089, Application for Permanent Employment Certification (Form ETA 9089 or labor certification)¹ accompanied the petition.

The director determined that the petitioner had failed to establish that the beneficiary possessed the educational credentials required to be eligible for the visa classification as a member of the professions holding an advanced degree. The director also concluded that certain requirements on the ETA Form 9089 would not be considered normal for the occupation. The director denied the petition accordingly.

On appeal, counsel submits additional evidence and asserts that the beneficiary has the equivalent of a U.S. Master's degree and that requirements set forth on the ETA Form 9089 are normal for the occupation.

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. The priority date of any petition filed for classification under

¹ The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. New Department of Labor regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by DOL by the acronym PERM. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. Therefore these regulations apply to this case because the filing date is September 19, 2013.

section 203(b) of the Act “shall be the date the completed, signed petition (including all initial evidence and the correct fee) is properly filed with [United States Citizenship and Immigration Services (USCIS)].” 8 C.F.R. § 204.5(d). Here, the priority date is September 19, 2013. The petitioner must demonstrate that, as of the priority date, the beneficiary had the qualifications stated on its ETA Form 9089, submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

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. Further, it cannot be concluded that the alternative fields of study are normal for the occupation described on the ETA Form 9089.

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).

In the instant case, the ETA Form 9089 labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master's.
- H.4B Major field of study: Physical Therapy or Related Field.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: Yes.
- H.7A Specify major field of study: Kinesiology, Biokinesiology, Rehabilitation Science, or related Physical Therapy field.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: No.
- H.10A Number of months of experience in alternate occupation required: n/a
- H.10B Identify the job title of the acceptable alternate occupation: n/a
- H.14. Specific skills or other requirements: State of Washington license in Physical Therapy. This employer will accept a Master's degree, including a degree determined by FCCPT to be the equivalent of a U.S. Master's degree.

Part J of the labor certification states that the beneficiary's highest level of education related to the offered position is a Master's degree in Physical Therapy awarded in 1999 from the [REDACTED]

As noted above, the ETA Form 9089 requires that the beneficiary have a Master's degree, not an alternate combination of education and experience described as a bachelor's and five years of progressive experience. 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. Master's degree or a foreign equivalent degree established by an official academic record.

The record contains a copy of a diploma from the [REDACTED] indicating that the beneficiary received a Bachelor in Physical Therapy on April 5, 1999, accompanied by a copy of the beneficiary's transcript of grades. It indicates that she completed a four-year program with additional periods spent in a clinical internship. The period(s) of clinical internship are stated as May 1998 to October 1998 and from November 1998 to March 1999.

The record also contains evidence of the beneficiary's licensure as a physical therapist in the state of Washington, which is where the job will be located, as well some documentation from [REDACTED] Director of Credentialing Services of the Foreign Credentialing Commission on Physical Therapy, Inc. (FCCPT). FCCPT is one of the credentialing agencies recognized by the state of Washington. The record reflects that FCCPT issued a "Visa Credential Verification Certificate" to the beneficiary as a physical therapist on April 30, 2008. [REDACTED] additionally provided a copy of a "Report of Evaluation of Educational Credentials," dated March 9, 2007 and prepared in connection with the beneficiary's application to be licensed in Florida. The evaluation confirms the beneficiary's receipt of a Bachelor's degree in Physical Therapy from the [REDACTED] Inc. in 1999 and describes the program as five (5) years in length, with four (4) years classroom time and ten (10) month of clinical time. It also states that one (1) credit from the Philippines equals 0.75 U.S. semester credits. On the subsequent page, [REDACTED] states the beneficiary's total number of U.S. semester credits as 180.5 and refers to other credits appearing on "Appendix B" and a "coursework evaluation tool." Neither the Appendix B, nor the coursework evaluation tool is present in the record. 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)). [REDACTED] concludes that the beneficiary's credits meet Florida requirements and that the beneficiary's education is "substantially equivalent to the first professional degree in physical therapy in the United States."

In a letter, dated February 19, 2009, [REDACTED] explains that the Commission on Accreditation of Physical Therapy Education (CAPTE) is the agency that sets standards for physical therapy education in the United States, and that in 2001, CAPTE discontinued the accreditation of baccalaureate degree programs and changed to post-baccalaureate programs, resulting in the first professional degree in physical therapy being that at the master's or doctoral level. [REDACTED] states that FCCPT issued "Type 1 Comprehensive Credentials Review Certificate," mean that the candidate "has achieved substantial equivalency to the first professional degree in physical therapy in the United States [and] that it is equivalent to at least a Master's degree in Physical Therapy, awarded at a CAPTE-accredited U.S. institution." It is unclear from this letter whether the beneficiary's credential verification certificate or the credentials evaluation authored by [REDACTED] represents the "Type 1 Comprehensive Credentials Review Certificate" referred to in this letter. The letter does not address the fact that the beneficiary commenced her degree program in 1994, prior to CAPTE's decision to cease accreditation of baccalaureate degree programs.

Moreover, it is noted that 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," meaning that on average, masters' programs would require 202.1 credits

As set forth in the director's Notice of Intent to Deny issued on October 1, 2013, the website maintained by the the American Association of Collegiate Registrars and Admissions Officer (AACRAO) had been consulted. AACRAO is a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions and agencies in the United States and in over 40 countries.² Its mission "is to serve and advance higher education by providing leadership and academic and enrollment services." *Id.* According to the login page, EDGE is a "web-based resource for the evaluation of foreign educational credentials" that contains 232 country profiles and is updated and expanded regularly as educational systems change.³ USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁴

According to EDGE, a Bachelor of Science from the Philippines represents attainment of a level of education "comparable to a bachelor's degree in the United States." Additionally, it describes the Filipino Bachelor of Science as representing:

² See Dale E. Gough, Director of International Education Services, "AACRAO EDGE Login," <http://www.aacrao.org/About-AACRAO.aspx> (accessed on February 28, 2014).

³ See <http://edge-preview.aacrao.org> (accessed by AAO on February 28, 2014).

⁴ 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. v. USCIS*, 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. See also *Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

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 (Architecture, Engineering, Physical Therapy and Occupational Therapy for example, are five).

EDGE also describes a "Master of Arts/Science degree gained in the Philippines as 1-2 years of graduate study usually requiring a thesis."⁵ EDGE considers this degree to be the equivalent of a U.S. Master's degree.

EDGE recognizes that the Filipino Bachelor of Science in Physical Therapy may represent a five-year program of study. The director's final decision concluded that based on the conclusions of EDGE, the evidence in the record is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. Master's degree in Physical Therapy as required by the terms of the labor certification.

As set forth above, section 203(b)(2) of the Act provides that a Bachelor's degree followed by five years of progressive experience is considered the equivalent of a Master's degree. However, in this matter, the ETA Form 9089 does not provide for this alternative equivalency and requires an actual U.S. Master's degree or a foreign equivalent degree.

That the beneficiary possesses the necessary credentials for state licensure is 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). 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 appeal, counsel submits copies of various Washington statutory provisions, copies of CAPTE articles, a copy of the Washington Department of Health policy citing FCCPT as one of its recognized credential evaluation services, and copies of the beneficiary's FCCPT documentation previously submitted to the underlying record. Counsel asserts that the standard for physical therapists in the state of Washington requires graduation from a CAPTE approved school or one that is substantially equivalent and that the beneficiary meets the current licensing standard. He maintains that the FCCPT evaluation should be recognized as it establishes that the beneficiary's Filipino Bachelor's degree in Physical Therapy is the U.S. equivalent of a Master's degree in Physical Therapy.

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). FCCPT's authority, which USCIS granted pursuant to 8 C.F.R. §

⁵ See <http://edge.aacraoorg/country/credential/master-of-artsscience-etc?cid=single> (accessed February 28, 2014).

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).

The petitioner presented no diploma from the Philippines indicating that the beneficiary possesses a Master's degree in Physical Therapy representing 1-2 years of *graduate* study. (Emphasis added). Rather, the beneficiary has a Bachelor's degree in Physical Therapy from the Philippines, representing a five-year program (including ten months of clinical work) but not representing the U.S. equivalent of a Master's degree (or even a Filipino Master's degree). In this, the AAO does not find the FCCPT credential evaluation by [REDACTED] to be probative of the beneficiary's U.S. educational equivalency or that the beneficiary's Filipino Bachelor's degree constitutes a single foreign equivalent degree to a U.S. Master's degree, the requirement for this classification as set forth 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 [REDACTED], 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. Nor has counsel demonstrated that the FCCPT issuance of a certificate is binding on USCIS or meets the regulatory definition of an advanced degree required by the second preference visa classification.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 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 no presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998)(citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

On appeal, counsel also cited a non-precedent AAO decision. 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).

The beneficiary does not have a United States Master's degree in Physical Therapy or a foreign equivalent advanced degree, and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. 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.

Additionally, the AAO cannot conclude that the director erred in finding that the additional alternative major fields of study listed as Kinesiology, Biokinesiology or Rehabilitation Science on Part H.7A of the ETA Form 9089 would not be normal for the occupation of physical therapist in the state of Washington where this job opportunity is located. This issue was raised in the director's NOID and the petitioner's response indicated that the alternative majors were included so as to recognize other states' requirements. The director noted that evidence of other states' requirements was provided to the record. The petitioner also asserts on appeal that these other requirements are irrelevant to the beneficiary's employment in Washington as a licensed physical therapist. The Washington statutory requirements within chapter 18.74.030 (RCW), however, seem to require only degrees in the major field of study of physical therapy rather than in another field of study. Specified credit hours of study in other disciplines are included, but are not described as major fields of study. As this job opportunity is for a [REDACTED] Washington location and does not state that other unanticipated locations in the United States may arise, then other fields of study would not be normal for this particular occupation.

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), or that the normal requirements of the occupation are reflected on the ETA Form 9089. 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.