

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

(b)(6)

DATE: **MAR 24 2014** OFFICE: TEXAS SERVICE CENTER

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 is ineligible for 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 July 24, 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 from the Philippines is the foreign equivalent of an advanced degree. In response, counsel submitted an additional statement and additional evidence.

On appeal, counsel requests oral argument before the AAO due to “significant legal issues raised in this matter.” USCIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unique factors or issues of law that cannot be adequately addressed in writing. *See* 8 C.F.R. § 103.3(b). In this instance, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

For the reasons discussed below, upon review of the entire record, 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 on line H.4 that the minimum education level for the position is a master's degree in physical therapy. The petitioner further indicated on line H.8 that an alternate combination of experience and education would not be acceptable. Accordingly, the petitioner defined the educational requirement for the position as a master's degree in physical therapy. On line H.9, the petitioner indicated that a foreign educational equivalent would be acceptable. Thus, the petitioner must establish that the beneficiary meets the minimum educational requirement of the offered position, a U.S. master's degree in physical therapy or the foreign equivalent of that degree, by virtue of her degree alone.

The petition included a copy of the beneficiary's 2003 Bachelor of Science in Physical Therapy from the [REDACTED] and her transcripts, a revised "Report of Evaluation of Educational Credentials" (report) dated August 24, 2011 from the Foreign Credentialing Commission on Physical Therapy (FCCPT), and a revised "FCCPT Course Work Evaluation Checklist" (evaluation) also dated August 24, 2011. The FCCPT 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 at the time of graduation." The report also states that "[t]he first professional degree in physical therapy is the master's degree or higher."

The revised report states that the beneficiary "meets the minimum requirements of fifty-four (54) semester credits in general education...[and] sixty-nine (69) semester credits in professional education. As discussed in the NOID, the revised "evaluation provides no explanation for the discrepancy in the Summary section between the stated minimum required credits of 123 listed for general and professional education and the total minimum required of 150 semester credits." Counsel does not address this issue in his response.

In a letter dated August 24, 2011 letter, [REDACTED] Managing Director of Credentialing Services at FCCPT, explained that, in 2001, the Commission on Accreditation in Physical Therapy Education (CAPTE) discontinued the accreditation of baccalaureate degree programs in the United States. [REDACTED] further explained that U.S. accredited programs have converted to post-baccalaureate programs. [REDACTED] concluded that the current first professional degree in the United States is at least a master's degree or higher.

The record also contains an evaluation from [REDACTED] which states that the beneficiary "has the equivalent of a master of physical therapy degree." Although the AAO's NOID specifically discussed the failure to include the materials upon which Ms. Mittelstaedt relied, the petitioner did not include copies of the materials in the response to the AAO's NOID. 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)).

In its NOID, the AAO explained that neither the FCCPT report, nor the evaluation, provides a basis for the statement that 150 semester credits is the minimum required for an advanced degree in physical therapy in the United States.

As stated in the NOID, according to page iv of CAPTE's *Evaluative Criteria PT Programs* (January 2013) "[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, according to the information from the *Occupational Outlook Handbook* (OOH) submitted by counsel on appeal, doctoral programs in physical therapy are typically three years, with a master's program requiring two to three years of study.

In response to the AAO's NOID, counsel submitted a July 16, 2013 letter from [REDACTED] which states that "FCCPT's 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 [NCES]: *Digest of Education Statistics 2006, Appendix B: Definitions*, as well as data from *The American Physical Therapy Association ("APTA") Fact Sheet, 2009-10*.

The petitioner failed to provide copies of [REDACTED] sources. An online search for the documents [REDACTED] references yielded both documents. According to the referenced *Digest of Education Statistics*, 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." In other words, a bachelor's degree may, in some cases, require more than four years, or 120 semester credits, and include "co-operative or work-study programs," such as the beneficiary's ten month clinical program.

*The APTA Fact Sheet* does not discuss whether 150 credit hours is the appropriate measure for a degree above a baccalaureate, but rather states that the average physical therapist education program required 210.9 total semester credits in 2004-2005 and 228.1 total semester credits in 2009-2010, which far exceeds the 150 stated by [REDACTED] and is consistent with the information in CAPTE's publication, discussed above. [REDACTED] also references the Electronic Database for Global Education (EDGE) which "defines the undergraduate bachelor's degree as four years of study, or 120-140 semester credits...[and] a master's degree as 1-2 years in length," but also does not state that 150 semester credits is the minimum required for a U.S. advanced degree in physical therapy.

In her July 2013 letter, [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.'" While [REDACTED] is correct, according to CAPTE, the "average" master's program length in physical therapy requires 52.1 credits more than the 150 used by FCCPT. 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.

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.

According to the July 16, 2013 letter from [REDACTED] "FCCPT uses the Coursework Tool [(CWT)] developed and licensed by the Federation of State Boards of Physical Therapy." In response to the AAO's NOID, footnote 1, counsel refers the AAO to FSBPT's website, [www.fsbpt.org/FreeResources/Regulatory/Resources/CourseworkTools\(CWT\).aspx](http://www.fsbpt.org/FreeResources/Regulatory/Resources/CourseworkTools(CWT).aspx), which includes a link to the actual coursework tools. Counsel has incorporated this website into the record of proceeding by reference. The AAO accessed the CWT at [https://www.fsbpt.org/Portals/0/documents/free-resources/CWT4\\_Rev0812.pdf](https://www.fsbpt.org/Portals/0/documents/free-resources/CWT4_Rev0812.pdf). CWT 4 covers

“Foreign Educated Physical Therapists who graduated from 1998 to June 30, 2009.” The beneficiary graduated in 2003. FCCPT, however, completed the beneficiary’s evaluation using the tool bearing the footer: “V.4.30 © FSBPT 2004.” This tool uses lower minimum requirements than those listed on the CWT 4. Specifically, while CWT 4 lists the minimum number of professional education credits as 90, the version FCCPT used for the beneficiary lists the minimum as 69. The beneficiary has only 86.25 professional education credits. The version FCCPT used in this matter does not currently appear on FSBPT’s website. Accordingly, the new letter from [REDACTED] is not probative and relevant evidence responsive to the AAO’s concerns regarding the FCCPT evaluation as evidence that the beneficiary has a foreign equivalent degree to a U.S. master’s degree in physical therapy.

Although counsel relies on the fact that "FCCPT has been approved by USCIS as an authorized credentialing organization, specifically for Physical Therapist[] evaluations," the regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers 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. § 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 [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 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 FCCPT had completed additional post-graduate studies to supplement their initial degree, which contributed to the equivalency analysis.

The letter also states that "FCCPT's analysis does not examine whether a particular degree or educational institution is equivalent – rather, FCCPT separately evaluates the specific coursework of each individual applicant." In addition, 8 C.F.R. § 212.15(f)(i) authorizes FCCPT 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 FCCPT looks at coursework and credentials beyond the beneficiary’s degree, it 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).

Where the analysis of the beneficiary's credentials relies on "equivalence to completion of a United States baccalaureate or higher degree," the result is the "equivalent" of an advanced degree rather than a "foreign equivalent degree."<sup>1</sup> The provided information makes it clear that FCCPT looks at an individual's coursework (which may include coursework from multiple sources), and not the individual's degree, to determine "substantial equivalence," which is a different standard. Based upon FCCPT's methodology, the evaluation is not a proper basis to determine whether the beneficiary holds the foreign equivalent of a U.S. master's degree in physical therapy, the requirement listed on the ETA Form 9089 or the foreign equivalent of an advanced degree as required by the classification.

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 its 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.<sup>2</sup> The AAO provided the petitioner with copies of all of the relevant information.

In response, counsel asserts that EDGE is relying solely on the name of the degree itself. Rather, as stated above, [REDACTED] explains that the Philippine educational system is similar to the U.S. system and uses the nomenclature used in the United States. EDGE's determination is that the five year physical therapy degree program in the Philippines is equivalent to an undergraduate level education in the United States, not an advanced degree. The decision in the United States to discontinue the baccalaureate degree in physical therapy does not create a presumption that a country

<sup>1</sup> Compare 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

<sup>2</sup> 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).

that continues to offer a baccalaureate degree must have increased the level of that degree to above a baccalaureate. Unlike FCCPT, which bases its determination on credits for coursework, EDGE looks at the educational system of the country and the degree itself to make its determination.

The petitioner has not demonstrated that the information from EDGE is not applicable to the beneficiary's baccalaureate degree, especially since it addresses the five-year (including clinical training) Bachelor of Physical Therapy degree offered in the Philippines. Furthermore, the petitioner has not demonstrated that the beneficiary's program is different from the other five year physical therapy programs EDGE references.

Counsel asserts that the EDGE/AACRAO finding is "inconsistent" with "FSBPT, FCCPT, CAPTE, and 52 of 53 state jurisdictions." However, there is no evidence that any of these entities require an individual to have a single degree that, in and of itself, is the foreign equivalent of a U.S. master's degree in physical therapy, rather than simply meeting a minimum number of credits which can be granted from a variety of sources.

Counsel also states that the "FCCPT opinion is more credible [than AACRAO/EDGE] because it ...has been singled out by the USCIS for evaluating degrees under the nearly identical Healthcare Worker Certification Standard." As stated above, the regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers is for the limited purpose of overcoming the inadmissibility provision pursuant to 8 C.F.R. § 212.15(e) and does not extend to determining whether the beneficiary's education satisfies the minimum requirements stated on the ETA Form 9089. 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 record also contains 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. In fact, in both decisions, the information regarding the degree equivalency submitted was consistent with EDGE's findings. Therefore, the petitioner has not established that the two non-precedent decisions are relevant to the instant petition.

in her July 2013 letter, also 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 AAO's NOID, counsel submitted the licensing requirements for the District of Columbia, where the beneficiary is licensed. The submitted information, however, only confirms that the district requires "[f]oreign-trained applicants [] [to] obtain a Type 1 Certification of their foreign education in Physical Therapy from...FCCPT." As previously discussed, FCCPT looks at coursework and credentials beyond the beneficiary's degree when issuing a certification and does not evaluate whether the beneficiary's degree from the Philippines is a single foreign equivalent degree above that of a baccalaureate or a single foreign degree equivalent to a U.S. master's degree in physical therapy.

While USCIS has considered the findings of FCCPT and FIS, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. As stated in the director's decision and the AAO's NOID, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795.

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

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*NON-PRECEDENT DECISION*

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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.