



U.S. Citizenship
and Immigration
Services

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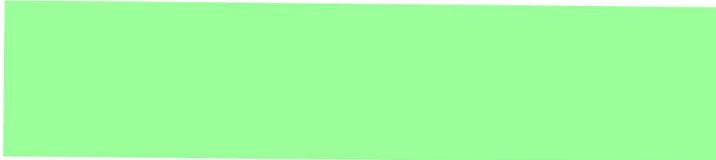
DATE: **MAR 28 2014** OFFICE: NEBRASKA SERVICE CENTER



IN RE: Petitioner: [Redacted]
Beneficiary: [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) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner describes itself as a software services, data management and business company. It seeks to permanently employ the beneficiary in the United States as a software engineer. 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.

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).¹ The priority date of the petition is March 16, 2006.²

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

- H.4. Education: Bachelor's (Computer Science Electronic/Electrical Engineering, Engineering, Math).
- H.5. Training: None required.
- H.6. Experience in the job offered: 60 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: For evaluating experience in the offered position under item H(6), employer will consider only substantive past job duties, irrespective of the job titles designated by the past employers. Relocation possible.

Part J of the labor certification states that the beneficiary possesses a Bachelor's degree from the Institution of Engineers (India), completed in 1998. The record contains a copy of the beneficiary's certification that he passed Sections A and B of the Institution Examinations in the Electronics and Communication Engineering Branch and the corresponding transcripts covering 1995 through 1998. The record also contains results from the Technical Examinations Board, [REDACTED] from 1990 through 1993.

¹ See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).

² The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

The record also contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] on May 18, 2012. The evaluation states that the beneficiary's passage of the sections A and B of the Examinations in Electronics and Communication Engineering of The Institution of Engineers of India is equivalent to a U.S. Bachelor of Science degree in Electronic Engineering.

Part K of the labor certification states that the beneficiary possesses the following employment experience:

- [REDACTED] with the petitioner from October 1, 2004 to the date of signing, June 7, 2006.
- Software Programmer with [REDACTED] from August 15, 2002 through September 30, 2004.
- Programmer/ system administrator with Intersoft Technics (now Aptech Computer Education) in [REDACTED] from September 1, 1999 through February 1, 2002.
- Software Programmer with [REDACTED] from August 1, 1996 through August 1, 1999.

The record contains an experience letter from [REDACTED] stating that the company employed the beneficiary as a software programmer from August 15, 2002 until September 30, 2004. The record also contains a letter from [REDACTED] Education letterhead stating that the beneficiary worked as a system administrator and senior faculty from September 1999 to the date of the letter, September 20, 2001; an affidavit from [REDACTED] stating that he was a co-worker of the beneficiary at [REDACTED] from April 2000 to February 2002; and a letter bearing an illegible signature on Intersoft Technics letterhead dated April 15, 2002 stating that the beneficiary worked from September 1999 to January 2002 for that firm. The record also contains a letter from [REDACTED] letterhead stating that the beneficiary worked as a computer programmer and system administrator from August 1996 to August 1999 for that company.

The director's decision denying the petition states that the beneficiary's passage of the IEI examinations is dated 1994 and 1997, while the Indian government did not recognize the IEI as equivalent to an Indian bachelor's degree until January 2006. The director noted that the Indian government document recognized the courses of Section A and B Examination *as revised* as the equivalent to an Indian bachelor's degree and no evidence had been submitted to demonstrate that the Examinations passed by the beneficiary were the revised examinations contemplated in the Indian government document. In addition, the director noted that the Electronic Database for Global Education (EDGE)³ documentation did not hold that passage of the A and B Examinations were the

³ EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration

equivalent of a U.S. bachelor's degree, but rather holds that passage of the Examinations was *comparable* to a U.S. bachelor's degree.

On appeal, the petitioner states that the letter from the Indian government should be applied retroactively insofar as the letter is not self limiting to particular examinations corresponding to particular dates. Counsel further states that the revised and prior examinations contained only minor revisions which would not affect equivalency determinations. Concerning EDGE, counsel states that the terms "comparable" and "equivalent" are synonymous and should be viewed as such in using EDGE to determine the equivalency.

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.⁴ The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.⁵ 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.⁶

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (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:

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 March 21, 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 March 21, 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. 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.

⁴ 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).

⁵ 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).

⁶ 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).

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).⁷ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

⁷ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

[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.

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, 101st Cong., 2nd 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. 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."⁸ In order to have experience and 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).

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

⁸ 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 classification sought in this matter do not contain similar language.

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." The AAO 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 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. 2003) (the basic tenet of statutory construction, to give effect to all provisions, is 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).⁹

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 passage of the A and B Examinations of the IEI as being equivalent to a U.S. bachelor's degree. The petitioner further relies on the beneficiary's more than five years of post-baccalaureate experience as being equivalent to an advanced degree.

As is noted above, the record contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] for Department of Statistics and Computer Information Systems, [REDACTED] on May 18, 2012.¹⁰ The evaluation states that the beneficiary's passage of the sections A and B of the Examinations in Electronics and Communication Engineering of The

⁹ 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").

¹⁰ 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)); *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).

Institution of Engineers of India is equivalent to a U.S. Bachelor of Science degree in Electronic Engineering. Professor Appel noted that the Indian Ministry of Education and Social Welfare recognizes the A and B Examinations passage as being equivalent to an Indian bachelor's level degree. Professor Appel additionally notes that the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) states that associate membership in The Institution of Engineers (IEI) represents the equivalent to a bachelor's degree in the United States and concludes that the passage of the A and B level examinations would also be equivalent to a U.S. bachelor's degree as they constitute "the requisite academic component" for associate membership in IEI.

In response to a Request for Evidence (RFE) issued by the director on April 5, 2013, the petitioner submitted a follow-up letter from Professor Appel dated May 3, 2013. Professor Appel responded to the director's concerns that IEI was not a degree issuing institution by finding that an IEI associate membership qualifies as an academic degree as it requires education instruction and thus the IEI must be a degree issuing institution. Professor Appel also states that EDGE's detailed entry concerning associate membership in the IEI and its equivalency to a U.S. bachelor's degree should be considered as dispositive of the issue and is supported by findings of the Office of Research of the U.S. Department of Education when it categorized associate membership in the IEI with U.S. bachelor's degrees. Within India, Professor Appel notes that Bachelor of Engineering degrees and Bachelor of Technology degrees require four years of university study and are generally considered equivalent to a U.S. bachelor's degree. Professor Appel further examines the courses required by the IEI and compares them to U.S. institutions with engineering programs, finding them to be similar if not identical. As a result, Professor Appel concludes that the beneficiary's passage of the A and B Examinations should be accepted as the equivalent of a U.S. bachelor's degree in Engineering.

The AAO has reviewed EDGE.¹¹ According to EDGE, associate membership in the IEI is comparable to a U.S. bachelor's level education. EDGE is notably silent concerning any equivalency for passage of the A and B level examinations.

As is 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.

¹¹ In *Confluence International, 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 beneficiary'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 beneficiary'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 required a degree and did not allow for the combination of education and experience.

While EDGE concludes that an IEI associate membership is "comparable to" a U.S. bachelor's degree, it is not a degree from a college or university. The IEI is not an institution of higher education that can confer a degree.¹² Therefore, associate membership in the IEI is 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). It is also noted that no evidence in the record indicates that the beneficiary holds associate membership in the IEI. As a result, it is unclear that he holds the equivalent of a U.S. bachelor's degree.

In addition, as noted by the director, the Indian government did not recognize the IEI as equivalent to an Indian degree until January 2006. In the United States, institutions of higher education are not authorized or accredited by the federal government. See <http://ope.ed.gov/accreditation> (accessed March 7, 2014). Instead, the authority to issue degrees is granted at the state level. However, state approval to operate is not the same as accreditation by a recognized accrediting agency.

According to the U.S. Department of Education (DOE), "[t]he goal of accreditation is to ensure that education provided by institutions of higher education meets acceptable levels of quality." See <http://www2.ed.gov/print/admins/finaid/accred/accreditation.html> (accessed March 7, 2014). Accreditation also ensures the nationwide recognition of a school's degrees by employers and other institutions, and also provides institutions and its students with access to federal funding.

Accrediting agencies are private educational associations that develop evaluation criteria reflecting the qualities of a sound educational program, and conduct evaluations to assess whether institutions meet those criteria. *Id.* Institutions that meet an accrediting agency's criteria are then "accredited" by that agency. *Id.*

The DOE and the Council for Higher Education Accreditation (CHEA) are the two entities responsible for the recognition of accrediting bodies in the United States. While the DOE does not accredit institutions, it is required by law to publish a list of recognized accrediting agencies that are deemed reliable authorities as to the quality of education provided by the institutions they accredit. *Id.*

The CHEA, an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. The presidents of American universities and colleges established CHEA in 1996 "to strengthen higher education through strengthened accreditation of higher education institutions." See www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf (accessed March 7, 2014). CHEA also recognizes accrediting organizations. "Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established." *Id.* According to CHEA, accrediting institutions of higher

¹² See *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that Institute of Chartered Accountants of India membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

education "involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort." *Id.*

In summary, accreditation provides assurance of a basic level of quality of the education provided by an institution as well as the nationwide acceptance of its degrees. An unaccredited degree does not provide a sufficient assurance of quality.

Since a U.S. degree must be from an accredited institution of higher education, a foreign degree must also be accredited by any existing comparable system of accreditation for that country in order to qualify as the foreign equivalent of a U.S. degree under 8 C.F.R. § 204.5(k)(2).

The evidence in the record indicates that the IEI was not recognized by the Indian Ministry of Education and Social Welfare prior to January 2006, which was after the beneficiary passed the 1994 Section A and 1997 Section B Examinations. As a result, the beneficiary's Section A and B Examinations were not from an accredited institution at the time they were earned and they may not be considered to be a degree within the meaning of the regulations.

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 petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires a bachelor's degree in Computer Science, Electronics/Electronic Engineering, Engineering, or Math plus five years of experience in the proffered position.

For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a U.S. bachelor's degree or its foreign equivalent.

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

Beyond the decision of the director,¹³ the petitioner has also failed to establish its continuing ability to pay the proffered wage as of the priority date. See 8 C.F.R. § 204.5(g)(2).

According to USCIS records, the petitioner has filed at least 84 I-140 petitions on behalf of other beneficiaries since 2006. Accordingly, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition.¹⁴ See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

The evidence in the record does not document the priority date, proffered wage or wages paid to each beneficiary, whether any of the other petitions have been withdrawn, revoked, or denied, or whether any of the other beneficiaries have obtained lawful permanent residence. Thus, it is also concluded that the petitioner has not established its continuing ability to pay the proffered wage to

¹³ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. 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); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

¹⁴ The evidence in the record indicates that the petitioner paid the beneficiary in excess of the proffered wage in 2008, 2010, and 2011, but that the petitioner paid the beneficiary less than the proffered wage in 2006, 2007, and 2009. The petitioner must demonstrate that it had sufficient net income or net current assets to pay the difference between the proffered wage and the actual wage paid to the beneficiary in these years in addition to meeting its wage obligations to the other sponsored workers.

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the beneficiary and the proffered wages to the beneficiaries of its other petitions. This issue must be addressed with any further filings.

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, that burden has not been met.

ORDER: The appeal is dismissed.