



U.S. Citizenship
and Immigration
Services

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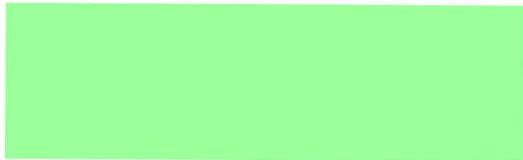
DATE: **NOV 13 2014** OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner: 
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). The petitioner filed an appeal, which was dismissed by the Chief, Administrative Appeals Office (AAO), on the ground that the petitioner failed to respond to a Notice of Intent to Deny and Request for Evidence (NOID/RFE) issued by the AAO. Upon discovering that the petitioner did respond to the NOID/RFE, the AAO reopened the proceeding by service motion. The appeal is again before the AAO, and will be dismissed on the merits.

The petitioner describes itself as a clinical information technology company. It seeks to permanently employ the beneficiary in the United States as a senior software developer and to classify him 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 requested preference classification and the terms of the labor certification.

PROCEDURAL HISTORY

The petitioner filed its Form I-140, Immigrant Petition for Alien Worker, on October 29, 2012. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on May 4, 2012, and certified by the DOL (labor certification) on August 17, 2012.

Part H of the labor certification sets forth the following minimum requirements for the job offered:

- | | | |
|------|--|---|
| 4. | Education: Minimum level required: | Master's degree |
| 4-B. | Major Field of Study: | Computer Science,
Electrical Engineering,
Engineering, or related field |
| 5. | Training: | None required |
| 6. | Experience in the Job Offered: | None required |
| 7. | Alternate Field of Study: | Acceptable |
| 7-A. | Alternate Field(s) of Study: | listed above at 4-B. |
| 8. | Alternate Combination of Education and Experience: | Not acceptable |
| 9. | Foreign Educational Equivalent | Acceptable |
| 10. | Experience in an Alternate Occupation | Not acceptable |

Part J of the labor certification states that the beneficiary has a master's degree in the fields of information technology, system integration and project management from the [REDACTED] completed in 2005.

As evidence of the beneficiary's educational credentials the petitioner submitted the following documentation with the Form I-140:

- A diploma and transcripts from [REDACTED] India, showing that the beneficiary received a Bachelor of Science in Computer Science on December 30, 2002, following completion of a three-year degree program in the years 1999-2002.
- A diploma, transcripts, and an attestation from the [REDACTED], a French *grande ecole*, showing that the beneficiary received a "Degree Certificate" of "*MSc Mastere en Sciences, Master of Science in Information Technology, major in System Integration & Project Management*" on November 24, 2005, following completion of two semesters of coursework in 2002-2003 and internships with two private companies in the years 2003-2005.

On November 18, 2013, the Director denied the petition on the ground that the petitioner failed to establish that the beneficiary has a U.S. master's degree or a foreign equivalent degree. In particular, the Director determined that the beneficiary's Bachelor of Science from [REDACTED] is equivalent to three years of university study in the United States, and that his "*Mastere en Sciences, Master of Science in Information Technology*" from the French *grande ecole*, [REDACTED] is not equivalent to a U.S. master's degree in that field of study.

The petitioner filed a timely appeal, supplemented by a brief from counsel and supporting documentation. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On March 25, 2014, we issued a Request for Evidence and Notice of Intent to Dismiss (RFE/NOID), which afforded the petitioner 45 days to submit additional evidence of (1) the beneficiary's educational qualifications, and (2) the petitioner's continuing ability to pay the proffered wage of the job offered from the priority date of the instant petition (May 4, 2012, the date the underlying labor certification application was accepted for processing by the DOL) up to the present. Following a request from the petitioner's counsel for an extension of the response period, we issued a second RFE/NOID on May 13, 2014, affording the petitioner 30 days to respond. On June 20, 2014, we summarily dismissed the appeal on the ground that the petitioner had not responded to the RFE/NOID of May 13, 2014. However, it subsequently came to our attention that the petitioner did respond to the NOID in a timely manner – on June 11, 2014 – with a letter from counsel and additional evidence. Therefore, on August 8, 2014 we issued a Notice of *Sua Sponte* Reopening,

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

advising the petitioner that the proceeding was being reopened on service motion and that an additional brief could be filed, at the petitioner's discretion, within 30 days. No such brief was received from the petitioner. Accordingly, the record in this proceeding is now complete.

Based on the entire record, including the documentation submitted in response to our RFE/NOID, we determine that the petitioner has established its continuing ability to pay the proffered wage of \$76,315.20 per year (as stated in Part G of the ETA Form 9089) from the priority date, May 4, 2012, up to the present.

The remaining issues on appeal are the following:

- Are the beneficiary's educational credentials, individually or collectively, equivalent to a U.S. master's degree, which would make him eligible for classification as an advanced degree professional under section 203(b)(2) of the Act?
- Does the beneficiary meet the job requirements set forth on the labor certification, which would qualify him for the proffered position?

LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

As indicated above, the ETA Form 9089 in this case is certified by the DOL. The DOL's role is limited to determining whether (1) there are sufficient workers who are able, willing, qualified and available, and (2) whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a). It is the responsibility of U.S. Citizenship and Immigration Services (USCIS) to determine whether the offered position and the beneficiary are eligible for the requested preference classification, and whether the beneficiary satisfies the minimum requirements of the offered position as set forth on the labor certification. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The terms "advanced degree" and "profession" are defined in 8 C.F.R. § 204.5(k)(2). The regulatory language reads as follows:

Advanced degree means any 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.

Profession means 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 in 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, a petition for an advanced degree professional 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. Furthermore, an “advanced degree” is either (1) a U.S. academic or professional degree or a foreign equivalent degree above a baccalaureate, or (2) a U.S. baccalaureate or a foreign equivalent degree followed by at least five years of progressive experience in the specialty.

As previously discussed, the beneficiary has two academic degrees, including (1) a three-year Bachelor of Science in Computer Science from [REDACTED] India, and (2) a “*Mastere en Sciences, Master of Science in Information Technology*” from [REDACTED] a *grande ecole* in [REDACTED] France. Among the materials submitted by the petitioner is a website excerpt from [REDACTED] which explains its “Master of Science” degree program, in pertinent part, as follows:

This international program is designed for international students with a bachelor’s degree and is opened to high potential international young engineers who are keen to study in France and develop knowledge and skills for an international career in engineering and in new information technologies.

[REDACTED] offers 2 international MSc programs taught in English:
[including] MSc in Information Technology (MSc IT)

Each program lasts two academic semesters (with courses entirely taught in English) followed by an internship in a company lasting from 5 months up to 12 months.

See [REDACTED]

In his denial decision of November 18, 2013, the Director utilized the Electronic Database for Global Education (EDGE), a database created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), as a primary resource for determining the U.S. equivalency of the beneficiary's foreign degrees. According to its website, www.aacrao.org, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions in over 40 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* EDGE, as stated on its registration page, is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. 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. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at [www.aacrao.org/publications/guide to creating international publications.pdf](http://www.aacrao.org/publications/guide%20to%20creating%20international%20publications.pdf). 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.* at 11-12. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies.²

With regard to the beneficiary's degrees, EDGE indicates that a three-year Bachelor of Science degree in India is comparable to three years of study at a college or university in the United States. Thus, a three-year Bachelor of Science in India is not equivalent to a U.S. bachelor's degree, which generally requires four years of undergraduate study. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). Even if it were combined with five years of post-graduate experience in the specialty, therefore, the beneficiary's three-year Bachelor of Science from [REDACTED] could not meet the definitional qualification for an advanced degree under 8 C.F.R. § 204.5(k)(2).

² 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 U.S. Citizenship and Immigration Services (USCIS) had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

With regard to the beneficiary's other degree – the “*MSc Mastere en Sciences*, Master of Science in Information Technology” from [REDACTED] – EDGE does not have information specific to that credential. However, it does have three listings for the degree of “*Mastere*” in France. They include:

■ *Mastere* –

Described as two years of post-graduate study at a *grande ecole*. The entry requirement is the completion of a *grande ecole* program and three years of professional experience.

■ *Mastere Specialisee / MS* –

Described as one year of post-graduate study at a *grand ecole*. The entry requirement is the completion of a *grand ecole* program and three years of professional experience.

■ *Mastere Professionnel* –

Described as one year of post-graduate coursework and an internship in a professional field. The entry requirement is a *Maitrise* or a *diplome* from a *grande ecole*.

According to EDGE, all three of the *Mastere* degrees listed in its database are comparable to a master's degree in the United States.

In comparing the above degree programs to the beneficiary's *Mastere en Sciences*, we note that they all have more extensive entry requirements than the beneficiary's own qualifications upon entering the *Mastere en Sciences* program. For example, the *Mastere* and *Mastere Specialisee* both require a completed *grande ecole* program,³ which entails five years of post-secondary study. See <http://edge.aacrao.org/wp-content/uploads/2012/04/bologna/pdf>. They also require three years of professional experience. By comparison, the beneficiary entered the *Mastere en Sciences* program with only three years of post-secondary study (at [REDACTED] and no professional experience. The *Mastere Professionnel* degree program requires either a *diplome* from a *grande ecole* (five years of post-graduate study) or a *Maitrise*, an old (pre-Bologna) degree that required four years of post-graduate study. See <http://edge.aacrao.org/wp-content/uploads/2012/04/pre-bologna/pdf>. While these entry requirements are less than those for a *Mastere* or a *Mastere*

³ *Grandes ecoles* are elite schools that operate parallel to France's universities. In comparison to the country's universities, which are comprehensive educational institutions covering a wide range of fields, the *grandes ecoles* are smaller in size and narrower in focus, supplying France with engineers, industrial research specialists, managers and administrators. To earn a *diplome* from a *grande ecole* a student must complete five years of post-secondary studies following the *baccalaureat* (equivalent to a U.S. high school education). The first two years of study are called "*classes preparatoire aux grandes ecoles*" (CPGE) and are completed either at a *grande ecole* or at a *lycee* (French high school). At the end of the two-year CPGE program students must pass a highly competitive examination (*le concours*) to gain admittance into a *grande ecole* for three years of additional coursework. See <http://edge.aacrao.org/country/overview/france-overview>.

Specialisee, they still exceed the beneficiary's qualifications (three years of post-graduate study) when he entered the *Mastere en Sciences* program.

In summation, all three *Mastere* degrees listed in EDGE require more years of post-secondary study for entry into the program than the *Mastere en Sciences* (generally by two years, but possibly one). In addition, two of the three *Mastere* degrees listed in EDGE have a three-year professional experience requirement which evidently does not exist for the *Mastere en Sciences* program.

Furthermore, the total years of post-graduate study represented by the completed *Mastere* degrees listed in EDGE all exceed those of the beneficiary's *Mastere en Sciences*. While the beneficiary has four years of post-graduate study (three in India and one in France with his *Mastere en Sciences*) plus two internships with private companies, a *Mastere* degree holder would have seven years of post-graduate study, a *Mastere Specialisee* degree holder would have six years of post-graduate study, and a *Mastere Professionnel* degree holder would have five or six years of post-graduate study and an internship in a professional field.

Therefore, we conclude that a *Mastere en Sciences* is different from other *Mastere* degrees in the French educational system. The program was created specifically for international students, it is taught exclusively in English, its entry requirements are less than those for other *Mastere* degree programs, and the degree incorporates fewer years of academic study than other *Mastere* degrees. Accordingly, we determine that the EDGE credential advice for other *Mastere* degrees in France – that they are each comparable to a U.S. master's degree – is inapplicable to the *Master en Sciences* degree held by the beneficiary in this case.

The petitioner has submitted evaluations of the beneficiary's educational credentials from [REDACTED] dated January 28, 2013 (superceding a virtually identical evaluation dated July 28, 2011); and from [REDACTED] a computer professor at [REDACTED], dated December 16, 2013. The evaluations assert that that beneficiary has the equivalent of a U.S. master's degree in information systems. We do not agree.

The [REDACTED] evaluation finds that the beneficiary's three-year Bachelor of Science degree in computer science from [REDACTED] in India is equivalent to three years of study in that field at a U.S. college or university. [REDACTED] notes that this finding accords with the EDGE credential advice for three-year Bachelor of Science degrees from Indian universities. [REDACTED] then reviews the beneficiary's coursework in his *Mastere en Sciences* program at [REDACTED] which totaled one academic year, and finds that his degree (without any reference to the beneficiary's internships with two private companies) is equivalent to a two-year master of science in computer systems from an accredited U.S. university. [REDACTED] claims that this finding accords with the EDGE credential advice for *Mastere* degrees in France. The evidence of record does not support this claim. As previously discussed, there is no specific entry for the *Mastere en Sciences* in EDGE. Moreover, the *Mastere en Sciences* is not comparable to other *Mastere* degrees in France because the program is specifically for international students, is instructed in English, and requires fewer years of post-secondary study to enter the program. A *Mastere en Sciences* can be obtained with fewer

overall years of post-secondary coursework (four in the beneficiary's case) than with any of the *Mastere* degrees listed in EDGE. In our view, therefore, the [REDACTED] evaluation is flawed.

USCIS uses evaluations of a person's foreign education by credentials evaluation organizations as advisory opinions only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). Due to the shortcomings discussed above, we conclude that the [REDACTED] evaluation has little probative value as evidence that the beneficiary's *Mastere en Sciences* is equivalent to a U.S. master's degree.

The evaluation of Prof. [REDACTED] finds that the beneficiary's *Mastere en Sciences* degree from [REDACTED] is directly equivalent to a U.S. master of science in computer information systems – *i.e.* a single-source equivalent to a U.S. master's degree regardless of the beneficiary's underlying bachelor-level credentials. Prof. [REDACTED] reviews the beneficiary's curriculum at [REDACTED] and concludes that the courseload is comparable to U.S. master's degree programs at schools such as [REDACTED]. According to Prof. [REDACTED] his assessment of the U.S. equivalency of the beneficiary's *Mastere en Sciences* accords with the EDGE entries for *Mastere* degrees, all of which are rated as comparable to master's degrees in the United States. Prof. [REDACTED] cites a U.S. Department of Education (DoE) publication – “Mapping the World of Education: Comparative Database System” (attached to the evaluation) – which categorizes *Mastere* degrees from *grande ecoles* in the fields of engineering and business administration as “advanced Graduate-Level Programs” that involve at least two years of study beyond a first degree or one year beyond a second degree and “constitute a level of attainment beyond that of a second degree but not equivalent to a research doctorate.”

Prof. [REDACTED] evaluation is unpersuasive. Like [REDACTED] evaluation fails to acknowledge the fact that the *Mastere en Sciences* degree is not specifically listed in EDGE, and is substantively different in important respects from the other *Mastere* degrees that are individually listed in EDGE. As discussed above, the *Mastere en Sciences* degree program is specifically for international students, the courses are instructed exclusively in English, and fewer years of post-secondary study are required to enter the program. Thus, the U.S. equivalency for each of the three *Mastere* degrees listed in EDGE (“comparable to a master's degree”) does not apply to the *Mastere en Sciences*. Similarly, the DoE publication surveying academic degrees worldwide has an entry for *Mastere* degrees generally that does not appear to apply to the offshoot category of *Mastere en Sciences*. Prof. [REDACTED] has not shown how the excerpt he cites from the DoE publication on “*Mastere*” applies to the beneficiary's *Mastere en Sciences*. Like the [REDACTED] evaluation, therefore, Prof. [REDACTED] evaluation is flawed.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. When opinions are not in accord with other information or are in any way questionable, however, USCIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). *See also 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). Due to the

shortcomings discussed above, we conclude that the evaluation authored by Prof. [REDACTED] has limited evidentiary weight. It does not constitute persuasive evidence that the beneficiary's *Mastere en Sciences* is equivalent to a U.S. master's degree.

For all of the reasons discussed above, we conclude that the petitioner has failed to establish that the beneficiary's *Master en Sciences* is equivalent to a U.S. master's degree.

We reach no conclusion in this proceeding as to whether the beneficiary's *Mastere en Sciences* is equivalent to a U.S. bachelor's degree. Even if we made such a determination, however, the degree could not be combined with five years of qualifying post-baccalaureate experience in the specialty to make the beneficiary eligible for classification as an advanced degree professional because the labor certification specifies that a master's degree is required and does not allow for any alternate combination of education and experience.

Thus, the petitioner has failed to establish the beneficiary's eligibility for classification as an advanced degree professional under section 203(b)(2) of the Act based on his *Mastere en Sciences* from [REDACTED] France. Accordingly, the petition cannot be approved.

Qualifications for the Job Offered

To be eligible for approval under the immigrant visa petition, the beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).⁴ In this case, the priority date is May 4, 2012. The petition cannot be approved unless the beneficiary qualifies for the proffered position under the terms of the labor certification.

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference [immigrant visa category] status. That determination appears to be delegated to the INS⁵ 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.

⁴ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad.

⁵ The INS (Immigration and Naturalization Service) was succeeded by USCIS when the Homeland Security Act of 2002 took effect on March 1, 2003.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] 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 INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F.2d at 1309.

The key to determining the job qualifications is found in Part H of the ETA Form 9089. This part of the application describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See 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 alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Regarding the minimum level of education, training, and experience required for the proffered position of senior software developer, the ETA Form 9089 states the following:

- The minimum educational requirement is a master's degree in computer science, electrical engineering, engineering, or a related field, or a "foreign educational equivalent" (Part H, lines 4, 4-B, 7, 7-A, and 9).
- There are no minimum training or experience requirements (Part H, lines 5, 6, and 10).

The terms of the labor certification are clear. The employer specified that a master's degree or a foreign equivalent in computer science, electrical engineering, engineering, or a related field is required for the proffered position. The beneficiary's highest post-secondary degree is a "*Mastere en Sciences*, Master of Science in Information Technology" from [REDACTED], a French *grande ecole*, awarded after one academic year of coursework and internships with two companies in France. As previously discussed in this decision, we have concluded that the *Mastere en Sciences* is not equivalent to a U.S. master's degree. Since the beneficiary does not have a "foreign educational equivalent" to a U.S. master's degree, he does not qualify for the proffered position of senior software developer under the terms of the labor certification. For this reason as well, the petition cannot be approved.

Conclusion

Based on the foregoing analysis, we find that the petition is deniable on the following grounds:

- The beneficiary is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act because he does not have a U.S. master's degree in computer science, electrical engineering, engineering, or a related field, or a foreign equivalent degree.
- The beneficiary does not qualify for the proffered position under the terms of the labor certification, which require a U.S. master's degree in computer science, electrical engineering, engineering, or a related field, or a foreign educational equivalent.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the appeal will be dismissed.

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

ORDER: The appeal is dismissed