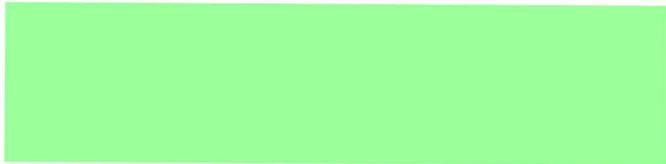




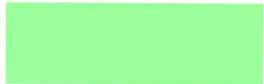
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **OCT 16 2014**

OFFICE: TEXAS SERVICE CENTER

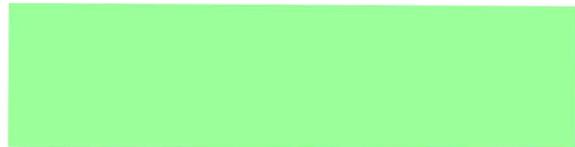
FILE: 

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 Under 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. We do not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe we 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 (Director), denied the immigrant visa petition and dismissed the petitioner's motion to reopen. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner provides information technology services. It seeks to permanently employ the beneficiary in the United States as a computer programmer. The petition requests classification of the beneficiary as an advanced degree professional under section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A).

At issue is whether the beneficiary possesses an advanced degree as required for the requested classification and by the terms of the accompanying ETA Form 9089, Application for Permanent Employment Certification (labor certification).

### I. PROCEDURAL HISTORY

As required by statute, the U.S. Department of Labor (DOL) approved the accompanying labor certification.<sup>1</sup> The petition's priority date is October 4, 2012.<sup>2</sup>

Part H of the ETA Form 9089 states the following minimum requirements for the offered position of computer programmer:

- H.4. Education: Master's degree in computer science.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- 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: "Knowledge of .NET and J2EE technology. Oracle Certified Professional Java SE 5 Programmer certification [r]equired."

The beneficiary stated on the labor certification that he received a Master's degree in computer science from [REDACTED] in India in [REDACTED]. The record contains copies of the beneficiary's [REDACTED] Master of Science degree in information technology and accompanying transcripts from the institute. The record also contains copies of the beneficiary's 2004 Bachelor of Computer Applications degree and accompanying transcripts from [REDACTED] in India.

The petitioner submitted a July 19, 2011 evaluation of the beneficiary's foreign educational credentials by [REDACTED]. The evaluation states that the

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

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

beneficiary completed three years of undergraduate study and two years of graduate study in India. The evaluation concludes that the beneficiary possesses the equivalent of a U.S. Master of Science degree in computer science.

The offered position does not require any experience. However, the beneficiary stated on the labor certification that he gained about 17 months of related experience before joining the petitioner in the offered position on October 29, 2007. The beneficiary stated that he worked for [REDACTED] in India as a software engineer from May 29, 2006 to October 3, 2007.<sup>3</sup>

In denying the petition and dismissing the petitioner's motion to reopen, the Director concluded that the record did not establish the beneficiary's possession of the qualifying education stated on the accompanying labor certification and required for classification as an advanced degree professional. The Director denied the petition on December 17, 2013 and dismissed the motion on April 28, 2014.

On appeal, the petitioner asserts that USCIS erred in determining that the beneficiary lacks a foreign degree equivalent to a United States Master's degree in computer science.

The appeal is properly filed and alleges specific errors in law or fact. This office conducts appellate review on a *de novo* basis.<sup>4</sup> We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>5</sup>

## II. LAW AND ANALYSIS

By approving the accompanying labor certification, the DOL certified that there are insufficient workers able, willing, qualified, and available to perform the job opportunity and that the alien's employment will not adversely affect the wages and working conditions of U.S. workers similarly employed. See section 212(a)(5)(A) of the Act (rendering immigrant workers inadmissible unless the DOL issues the required certifications).

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<sup>3</sup> The record is unclear as to whether the labor certification states "the employer's actual minimum requirements for the job opportunity" pursuant to 20 C.F.R. § 656.17(i)(1). The offered position requires knowledge of certain technologies and a programming certificate, but does not require any experience. The record does not indicate whether applicants could gain the required knowledge and certification without experience. The record does not contain copies of documentation regarding the labor certification process, such as copies of advertisements of the offered position and the recruitment report specified at 20 C.F.R. § 656.17(g)(1). The record also does not indicate how or whether the petitioner's ads included the "knowledge" requirements. In any future filings regarding this matter, the petitioner should provide documentation of the labor certification process, including copies of the ads for the offered position and the recruitment report.

<sup>4</sup> See 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dep't of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). Federal courts have long recognized our *de novo* appellate authority. See, e.g., *Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>5</sup> The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. See *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

U.S. Citizenship and Immigration Services (USCIS), however, determines whether a beneficiary possesses the minimum requirements for a position certified by the DOL, and whether the position and the beneficiary qualify for the requested immigrant visa classification. *See Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (stating that the immigration service “may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer”); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983) (state that “[i]t does not appear that the DOL’s role extends to determining if the alien is qualified for the job”); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983) (holding that, “[g]iven 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)(5)(A) of the Act]”).

Therefore, the DOL’s responsibility includes determining whether qualified U.S. workers are available to perform the offered position and whether the beneficiary’s employment will adversely affect similarly employed domestic workers. USCIS’s responsibility includes determining whether the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested immigrant visa classification.

### **Eligibility for the Classification Sought**

Section 203(b)(2)(A) of the Act makes visas available to qualified immigrants who are “members of the professions holding advanced degrees.” *See also* 8 C.F.R. § 204.5(k)(1).

The term “advanced degree” means:

[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.

8 C.F.R. § 204.5(k)(2).

A petition for an advanced degree professional must be accompanied by an official academic record showing that the beneficiary “has a United States advanced degree or a foreign equivalent degree;” or “has a United States baccalaureate degree or 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.” 8 C.F.R. §§ 204.5(k)(3)(i)(A), (B). The job offer portion of the accompanying labor certification must also require an advanced degree professional. 8 C.F.R. § 204.5(k)(4)(i).

In the instant case, the petitioner relies on the beneficiary’s three-year Bachelor of Computer Applications degree, followed by his two-year Master of Science degree in information technology, as the equivalent of a U.S. Master’s degree in computer science.

As indicated previously, the July 19, 2011 evaluation of the beneficiary's foreign educational credentials concludes that the beneficiary possesses the equivalent of a U.S. Master of Science degree in computer science.<sup>6</sup> The evaluation cites the Electronic Database for Global Education (EDGE) as one of its sources.

EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See Am. Ass'n of Collegiate Registrars & Admissions Officers, <http://www4.aacrao.org/centennial/about.htm>. AACRAO's mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>7</sup>

EDGE states that a Master of Science degree from India represents two years of university study beyond a three-year bachelor's degree. EDGE concludes that an Indian Master of Science degree is comparable to a bachelor's degree in the United States.

Although the educational evaluation submitted by the petitioner refers to EDGE, the evaluation's conclusion that the beneficiary possesses the equivalent of a U.S. Master's degree contradicts EDGE's conclusion that an Indian Master of Science degree is comparable to a U.S. bachelor's degree. The evaluation does not explain why or how it reached a conclusion different from its cited source. The contradictory conclusion of the evaluation casts doubt on its reliability. See *Matter of*

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<sup>6</sup> At its discretion, USCIS may treat expert testimony as advisory opinions. See *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, USCIS determines an alien's eligibility for the benefit sought. *Id.* The submission of expert letters in support of a petition does not establish presumptive eligibility. *Id.* USCIS may consider whether the letters' contents support the alien's eligibility. *Id.* USCIS may give less weight to opinions that are uncorroborated, inconsistent with other evidence, or questionable in any way. *Id.*: *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of Cal.*, 14 I&N Dec. 190, 193 (Reg'l Comm'r 1972)); see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (holding that expert witness testimony may be given different weight depending on the extent of an expert's qualifications or the relevance, reliability, and probative value of the testimony).

<sup>7</sup> Federal courts across the country have upheld the use of EDGE in visa petition proceedings. See *Viraj, LLC v. U.S. Att'y Gen.*, - Fed. Appx. -, 2014 WL 4178338 (11th Cir. 2014) (upholding reliance of USCIS on EDGE reports in ruling that a beneficiary with a three-year bachelor's degree and a two-year Master's degree from India did not hold an "advanced degree"); *Tisco Group, Inc. v. Napolitano*, No. 09-10072, 2010 WL 3464314 \*4 (E.D. Mich. Aug. 30, 2010) (finding that USCIS properly weighed a petitioner's evaluations and EDGE information to conclude that beneficiary's foreign undergraduate and graduate degrees were comparable to a United States bachelor's degree); *Sunshine Rehab Servs., Inc. v. USCIS*, No. 09-13605, 2010 WL 3325442 \*9 (E.D. Mich. Aug. 20, 2010) (upholding a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. baccalaureate); *Confluence Int'l, Inc. v. Holder*, No. 08-2665, 2009 WL 825793 \*4 (D. Minn. Mar. 27, 2009) (determining that this office provided a rational explanation for its reliance on EDGE information to support its decision).

*Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988) (a petitioner must resolve inconsistencies in the record by independent, objective evidence).

Therefore, the evidence of record does not establish the beneficiary's possession of a U.S. Master's degree or a foreign equivalent degree. Further, the labor certification does not permit and the petitioner does not claim that the beneficiary possesses at least five years of post-baccalaureate experience in the specialty to alternatively qualify as an advanced degree professional.

We issued a Notice of Intent to Dismiss (NOID) the appeal on August 20, 2014 and attached a copy of the EDGE report to it. In response, the petitioner submitted additional evidence in support of the beneficiary's qualifying education, including page printouts from the website of [REDACTED] another company that evaluates foreign educational credentials. The printouts state that [REDACTED] recognizes "selected" three-year bachelor's degrees from India as the equivalents of U.S. bachelor's degrees. To be considered U.S. baccalaureate equivalents, the printouts state that students must have earned three-year degrees with Division I grades and the institutions that issued the degrees must have been accredited by the National Assessment and Accreditation Council (NAAC) with a grade of "A" or better.

The [REDACTED] information also identifies nine U.S. universities "that would entertain applications [for graduate programs] by candidates who hold three-year bachelor's degrees." In addition, the petitioner submits a printout from the website of [REDACTED] indicating that the U.S. school will consider students holding three-year, Indian bachelor's degrees "for direct admission" to Master's degree programs in computer science and information systems.

The petitioner's evidence indicates that [REDACTED] recognizes certain three-year bachelor's degrees from India as equivalents of U.S. bachelor's degrees. However, the record does not include an evaluation of the beneficiary's educational credentials by [REDACTED] or evidence that the beneficiary's bachelor's degree from [REDACTED] would meet [REDACTED] criteria for a U.S. baccalaureate equivalency. [REDACTED] website contains a link to the NAAC's website, where information indicates that NAAC awarded [REDACTED] an accreditation grade of "B++." *See* World Ed. Servs., [REDACTED] (accessed Oct. 8, 2014).

Because the NAAC accredited [REDACTED] with a grade below "A," the record does not establish that [REDACTED] would recognize the beneficiary's bachelor's degree as the equivalent of a U.S. baccalaureate degree.<sup>8</sup> Also, the [REDACTED] information does not explain the evaluation service's reasoning for recognizing certain three-year, Indian bachelor's degrees as the equivalent of U.S. bachelor's degrees, or how its equivalency criteria differs from EDGE's.

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<sup>8</sup> The record also does not establish when [REDACTED] criterion requires an institution to obtain a minimum accreditation grade of "A" (e.g., currently, when the degree was issued, previously). The record also does not include previous NAAC accreditation grades obtained by [REDACTED]

The petitioner's evidence also indicates that certain U.S. universities will consider applicants with three-year, Indian bachelor's degrees for admission into graduate programs. However, the record does not establish that any of these universities would specifically accept the beneficiary's bachelor's degree for graduate admission in the required field of computer science. The record also does not indicate the universities' rationales or criteria for accepting three-year, Indian degrees as U.S. baccalaureate equivalents, or whether any other U.S. universities beyond the nine identified follow similar practices. For the foregoing reasons, the petitioner's evidence in response to the NOID does not establish the beneficiary's possession of the qualifying education.

The petitioner argues that USCIS errs in relying solely on EDGE to determine whether the beneficiary possesses the qualifying education. It asserts that we failed to consider other sources cited by the evaluation of the beneficiary's foreign educational credentials or to "articulat[e] a clear factual and legal basis for rejecting the expert opinion by [REDACTED]"

We acknowledge the other sources cited by the [REDACTED] education evaluation. However, the record does not contain any evidence from the evaluator or from any of the other sources cited by the evaluation in support of its conclusion or to explain its inconsistency with EDGE. *See Matter of Ho, supra*, at 591-92 (a petitioner must resolve inconsistencies in the record by independent, objective evidence).

Our factual and legal basis for discounting the education evaluation stems from the contradictory conclusions of it and EDGE. Not only have federal courts upheld EDGE as a reliable, peer-reviewed source of information about foreign educational equivalencies, *see supra* n.7, but the evaluation itself cites EDGE. Unless explained or resolved, the contradictory conclusions of the evaluation and one of its sources undermines the evaluation's reliability and probative value. *See Matter of D-R-, supra*, at 460 n.13; *Matter of Soffici, supra*, at 165 (citing *Matter of Treasure Craft of Cal., supra*, at 193); *Matter of Caron Int'l, Inc., supra*, at 795 (all holding that expert testimony may be afforded lesser evidentiary weight depending on a variety of factors, including its reliability, probative value, and consistency with other evidence); *see also Matter of Ho, supra*, at 591-92 (a petitioner must resolve inconsistencies in the record by independent, objective evidence). As noted above, the evaluation does not discuss the references cited as sources, or explain how the referenced sources support the evaluator's conclusion. The record does not include copies of the referenced sources.

The petitioner also cites a 1995 memorandum issued by the legacy Immigration and Nationality Service and an unpublished 2007 decision by this office. The memo states that evaluations of foreign educational credentials from reputable evaluation services "should be accepted without question unless containing obvious errors." Immigration & Nationality Serv., Nov. 13, 1995, *available at* 73 Interpreter Releases, No. 12, 364 (Mar. 25, 1996). The memo also states that "the ability of the credentials evaluator to perform the evaluation should not be challenged if the evaluation was performed by a professional credentials evaluation service." *Id.* The unpublished decision cited by the petitioner concludes that a beneficiary with a three-year bachelor's degree and a two-year master's degree from India possessed the required foreign equivalent of a U.S. Master's degree. *Matter of \_\_\_\_\_*, [REDACTED] (AAO Dec. 5, 2007).

Unpublished decisions and internal policy memoranda do not legally bind this office. *See* 8 C.F.R. § 103.3(c) (stating that only published, precedent decisions by the Board of Immigration Appeals (BIA), the Attorney General, and USCIS bind agency employees); *see also* *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (holding that an agency’s internal guidelines “neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely”). Therefore, we need not follow the memo or unpublished decision cited by the petitioner.

Moreover, the cited decision does not support the petitioner’s argument. USCIS records show that we reopened that matter and withdrew our December 5, 2007 decision. On April 28, 2009, we ruled that that petitioner did not establish the beneficiary’s possession of a U.S. Master’s degree or a foreign degree equivalent. *See Matter of \_\_\_\_\_*, \_\_\_\_\_ (AAO Apr. 28, 2009), *available at*

\_\_\_\_\_. Therefore, even if the case had been persuasive, it no longer stands for the proposition cited by the petitioner.

The memo cited by the petitioner is also unpersuasive. The memo provides guidance on the adjudication of H-1B nonimmigrant visa petitions, which are governed by different statutory and regulatory requirements than advanced degree professional petitions. Therefore, it does not relate to the adjudication of the immigrant visa petition in the instant case.

Moreover, as previously indicated, we must follow published, precedent decisions by our agency and the BIA. In multiple cases, the agency and the BIA have stated that expert testimony, like evaluations of foreign educational credentials, does not establish presumptive eligibility for the benefits sought and that such testimony may be afforded less weight depending on its relevance, reliability, probative value, corroboration, and consistency. *See supra* n.6.

In the instant case, the educational evaluation submitted by the petitioner was internally inconsistent, citing EDGE but contradicting its conclusion without explanation. We notified the petitioner of this issue in our NOID. The petitioner provided a second copy of the evaluation, but not further explanation from its author. Because the record does not explain or support the contradictory conclusion of the education evaluation, we afford the evaluation less evidentiary weight and conclude that the record does not establish the beneficiary’s qualifying education.

After reviewing all of the evidence of record, we conclude that the petitioner has not established the beneficiary’s possession of at least a U.S. Master’s degree or a foreign equivalent degree. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2)(A) of the Act.

### **The Minimum Requirements of the Offered Position**

A petitioner must also establish that a beneficiary satisfied all the educational, training, experience and other requirements of the offered position by the petition’s priority date. 8 C.F.R. §§

103.2(b)(1), (12); *see also* *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, USCIS must examine the job offer portion of the accompanying labor certification to determine the minimum requirements of the offered position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See K.R.K. Irvine, Inc. v. Landon, supra*, at 1009; *Madany v. Smith, supra*, at 1015; *Stewart Infra-Red Commissary of Mass., Inc. v. Coomey*, 661 F.2d 1, 3 (1st Cir. 1981).

USCIS interprets the meaning of job requirements on a labor certification by "examin[ing] the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale & Linden Park Co. v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the requirements must involve "reading and applying *the plain language* of the [labor certification]," even if the employer intended requirements other than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, as indicated previously, the accompanying labor certification states that the minimum requirements of the offered position of computer programmer include a Master's degree in computer science or a foreign equivalent degree. For the reasons previously discussed, the record does not establish the beneficiary's possession of a U.S. Master's degree in computer science or a foreign equivalent degree. The labor certification does not permit an applicant to qualify based on a bachelor's degree or a foreign equivalent degree followed by five years of experience in the specialty. Therefore, the record does not establish that the beneficiary meets the minimum requirements of the offered position as specified on the labor certification.

### **Specific Skills or Other Requirements**

Beyond the Director's decision, the record also does not establish the beneficiary's possession of the specific skills or other requirements of the offered position as specified on the accompanying labor certification.<sup>9</sup>

Part H. 14 of the accompanying ETA Form 9089 states additional requirements of the offered position of computer programmer, including "[k]nowledge of .NET and J2EE technology" and "Oracle Certified Professional Java SE 5 Programmer certification." Part J. 21 of the form states that the beneficiary did not gain qualifying experience for the job opportunity while employed by the petitioner in a "substantially comparable" position.

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<sup>9</sup> We may deny an application or petition that fails to comply with the technical requirements of the law, even if the Director did not identify all of the denial grounds in the initial decision. *See Spencer Enters., 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. Dep't of Justice, supra*, at 145 (noting that we conduct appellate review on a *de novo* basis).

However, the record indicates that the beneficiary obtained the required programming certification while employed by the petitioner in the offered position. The labor certification states that the petitioner has employed the beneficiary in the offered position since October 29, 2007. A copy of an examination score report accompanied the petition, indicating that the beneficiary obtained the required programming certification on August 17, 2011. In response to our NOID, the petitioner submitted a copy the beneficiary's programming certificate, which also indicates that it was issued on August 17, 2011.

A September 5, 2014 letter from the petitioner's president and chief executive officer confirms the petitioner's employment of the beneficiary since October 2007. The letter also states that an interviewer determined that the beneficiary possessed knowledge of .NET and J2EE technologies at the time the petitioner hired him. However, the letter does not state that the beneficiary possessed the required programming certification at the time of his hiring.

An employer cannot require U.S applicants to possess qualifications beyond those possessed by the alien at the time of hire, unless: the alien gained the qualifications while working for the employer in a position that was not "substantially comparable" to the offered position; or the employer can demonstrate that it is no longer feasible to train a worker to qualify for the offered position. 20 C.F.R. § 656.17(i)(3). A "substantially comparable" position means a job "requiring performance of the same duties more than 50 percent of the time." 20 C.F.R. § 656.17(i)(5)(ii).

In the instant case, the labor certification and the letter from the petitioner's president indicate that the petitioner employed the beneficiary in a substantially comparable position (the offered position) when the beneficiary obtained the required programming certification. The record does not contain any evidence of the infeasibility of training a worker to qualify for the offered position.

Therefore, because the beneficiary obtained the programming certification after the petitioner hired him, the record does not establish the beneficiary's possession of the specific skills or other requirements for the offered position.

### III. CONCLUSION

The record does not establish the beneficiary's possession of 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)(A) of the Act. The Director's decision denying the petition will be affirmed. The record also does not establish the beneficiary's possession of the programming certification specified by the labor certification before the petitioner hired him in the offered position.

The appeal will be dismissed for the above stated reasons, with each an independent and alternate basis for the decision. In visa petition proceedings, the petitioner bears the burden of establishing

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*NON-PRECEDENT DECISION*

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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.