



U.S. Citizenship
and Immigration
Services

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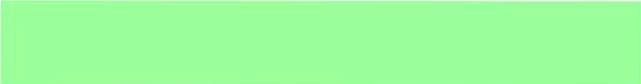


DATE: **OCT 23 2014**

OFFICE: NEBRASKA SERVICE CENTER

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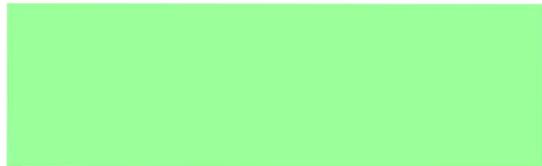
IN RE:

Petitioner: 

Beneficiary: 

PETITION: Immigrant Petition for Alien Worker as Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)(A)

ON BEHALF OF PETITIONER:



Enclosed please find the decision of the Administrative Appeals Office 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 (the director) denied the employment-based immigrant visa petition and the Administrative Appeals Office (AAO) dismissed the petitioner's subsequent appeal. The matter is again before us as a combined Motion to Reopen and Motion to Reconsider. The Motion to Reopen will be granted. We will affirm our prior decision. The petition will remain denied.

The petitioner describes itself as a product development business. It seeks to employ the beneficiary permanently in the United States as a Computer Systems Analyst pursuant to section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2)(A).¹ 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). The priority date of the petition is March 27, 2012, which is the date the labor certification was accepted for processing by DOL. See 8 C.F.R. § 204.5(d).

We conduct appellate review on a *de novo* basis. 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). Our *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). We consider all pertinent evidence in the record, including new evidence properly submitted on motion.² An application or petition that fails to comply with the technical requirements of the law may be denied even if the director 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 D.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, at 145.

Procedural History

On January 2, 2013, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, submitting copies of the beneficiary's degree certificates and a September 30, 2011 academic evaluation prepared by [REDACTED] of [REDACTED] to establish that the beneficiary's 1998 Master of Computer Applications (MCA) degree from the Faculty of Engineering at [REDACTED] India was the foreign equivalent of a U.S. Master's degree in Computer Science, as required by the labor certification.³ The petitioner also submitted copies of the

¹ Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), grants preference classification to members of the professions holding advanced degrees or their equivalent whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as:

[a]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree

² The submission of additional evidence on motion is allowed by the instructions to the Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

³ The labor certification (Parts H.4., H.4-B., H.7., and H.7-A.) requires the beneficiary to hold a Master's degree in Computer Science or Engineering.

beneficiary's 2011 Internal Revenue Service (IRS) Form W-2, Wage and Tax Statement; its 2011 federal tax return; and a copy of the beneficiary's earnings statement for the period ending August 31, 2012.

On January 3, 2013, the director issued a Request for Evidence (RFE) to the petitioner, informing it that the submitted evidence did not establish the beneficiary's MCA as a U.S. Master's degree in Computer Science. The RFE indicated that information provided by the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),⁴ reported that an Indian MCA, while a Master's degree, was comparable to a degree in Computer Application, not Computer Science. Accordingly, the director requested additional evidence to establish that the beneficiary's Master's degree was in the required field of study, Computer Science or Engineering.

In its March 20, 2013 response, the petitioner submitted a new evaluation of the beneficiary's academic credentials prepared by Professor [REDACTED] Department of Statistics and Computer Information Systems, [REDACTED], The [REDACTED], who found the beneficiary's MCA to be "the single-source foreign equivalent of a U.S. Master of Science Degree in Computer Science." In his March 11, 2013 opinion, Professor [REDACTED] further asserted that the general degree information provided by EDGE should be superseded by specific academic equivalency determinations of the type he was providing. The director, however, denied the visa petition on March 25, 2013, continuing to find that the record did not establish that the beneficiary possessed a Master's degree in the required field of study, Computer Science. On April 24, 2013, the petitioner appealed the director's decision to this office. A separately-filed brief from counsel maintained that the director had erred in relying on EDGE since the academic evaluations submitted by the petitioner clearly established the beneficiary's MCA as a Master's degree in Computer Science.

On July 26, 2013, we issued a Request for Evidence (RFE) to the petitioner, noting the degree information provided by EDGE and informing the petitioner that we intended to dismiss the appeal in the absence of additional evidence establishing the beneficiary's MCA as the equivalent of a U.S. Master's degree in Computer Science. The RFE also asked the petitioner to document its ability to pay the beneficiary the proffered wage as of the March 27, 2012 priority date of the visa petition.

On August 27, 2013, the petitioner responded to the RFE with a third evaluation of the beneficiary's academic qualifications, prepared by Professor [REDACTED]. Professor [REDACTED] August 19, 2013 evaluation concluded that there was a sound basis for considering the beneficiary's MCA to be equivalent to a degree in Computer Science and that the information in EDGE was "meant to be only advisory and requires interpretation." He further reasoned that "[e]ven

⁴ According to its website, AACRAO is "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 <http://www.aacrao.org/About-AACRAO.aspx>. Its 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." <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

if one were to conclude that the MCA has more applied courses . . . [it] should at the very least be considered a Master of Science in Computer Information Systems (CIS) as this degree is what will typically be equated for a Computing-related curriculum that contains more applied than theoretical courses.” Along with Professor [REDACTED] opinion, the petitioner submitted copies of its 2012 federal tax return, the 2012 Form W-2 issued to the beneficiary, and the beneficiary’s 2012 earnings statements.

On January 2, 2014, we issued a second RFE to the petitioner in which we noted that its August 27, 2013 response to our prior RFE had identified additional issues requiring clarification. Accordingly, we asked the petitioner to indicate whether, during the labor certification process, it had intended to allow for an alternative to a Master’s degree in Computer Science or Engineering, or a foreign equivalent degree, the requirements identified in the labor certification, and, if so, for evidence of that intent; for evidence that [REDACTED] considered the MCA to be a Computer Science degree, even though the degree programs of its [REDACTED] appeared to distinguish between the fields of computer science and computer applications; for the beneficiary’s original degree certificates or certified documentation of his degrees, sent directly to our office under [REDACTED] seal; and evidence establishing that, in addition to paying the proffered wage to the beneficiary, it had the ability to pay the proffered wages of its 15 other sponsored workers for whom immigrant visa petitions had been approved or were pending as of the priority date.

The petitioner responded on March 5, 2014, indicating that the minimum educational requirements for the offered position were those stated on the labor certification – a U.S. Master’s degree in Computer Science or Engineering or a foreign equivalent degree. It also provided copies of the beneficiary’s degree certificates and transcripts, certified by [REDACTED] and submitted in sealed envelopes, as well as 2012 and 2013 listings of its sponsored workers, and the Forms W-2 issued to these individuals in 2012 and 2013. Further, the petitioner provided a February 24, 2014 statement from Dr. [REDACTED] Professor and [REDACTED] WebMaster, Department of Computer Science & Systems Engineering, [REDACTED] to establish that the beneficiary’s MCA is considered to be a Computer Science degree by [REDACTED].⁵

The petitioner also submitted two additional evaluations of the beneficiary’s MCA, the first prepared by Dr. [REDACTED] Associate Professor, Department of Computer Systems Technology, [REDACTED]; the second by Professor [REDACTED], Computer and Information Science, [REDACTED].

Dr. [REDACTED] February 21, 2014 evaluation finds the curriculum completed by the beneficiary for his MCA to be comparable to the courses in U.S. Masters’ programs in Computer Science and related fields. He points to the thesis project completed by the beneficiary prior to receiving his MCA as proof that the beneficiary was enrolled in a graduate-level program in Computer Science. In his February 24, 2014 report, Professor [REDACTED] asserts that, in India, the field of computer applications is considered a more specialized subdiscipline of Computer Science, and that the

⁵ Although Dr. [REDACTED] statement was not specifically addressed in the April 3, 2014 dismissal of the appeal, it will be considered here.

coursework completed by the beneficiary comprises the curriculum of a U.S. Master's program in Computer Science. He submits printouts of the curricula offered in graduate programs in Computer Science at [REDACTED], the [REDACTED], and [REDACTED].

On April 3, 2014, we dismissed the petitioner's appeal, concluding that the record did not establish that the beneficiary's MCA was the foreign equivalent of a U.S. Master's degree in Computer Science. Our decision reviewed the five evaluations that had been submitted by the petitioner to establish the MCA as the foreign equivalent of a U.S. Master's degree in Computer Science, but found none to overcome the credentials advice provided by EDGE. In light of the numerous instances of duplicative language in their respective opinions, we could not accept either Dr. [REDACTED] or Professor [REDACTED] evaluations of the beneficiary's academic qualifications as having independent, credible evidentiary weight, and questioned the authorship of these reports. The three evaluations previously submitted by the petitioner, those prepared by [REDACTED], Professor [REDACTED], and Professor [REDACTED], were, as discussed below, also found unpersuasive.

Mr. [REDACTED] evaluation was found to offer no discussion of the basis on which he had concluded that the beneficiary's MCA was the equivalent of a U.S. Master of Science in Computer Science. Professor [REDACTED] evaluation largely focused on reasons to discount the EDGE's credentials advice equating the MCA's equivalency to a U.S. Master's in computer applications, limiting his discussion of the beneficiary's academic history to a few sentences. While Professor [REDACTED] evaluation offered a comparison between the beneficiary's curriculum and the courses found in Master's programs in Computer Science at U.S. colleges and universities, his conclusions were also ultimately unpersuasive.

In support of his findings, Professor [REDACTED] submitted copies of computer science courses taught at [REDACTED] the curriculum for the Master's program in Computer Science at the [REDACTED] and the schedule for graduate courses offered in Computer Science at [REDACTED]. However, the listing of Computer Science courses at [REDACTED] and the schedule of the graduate courses in Computer Science offered by [REDACTED] provide no information concerning the requirements for their Masters' degrees in Computer Science. Moreover, [REDACTED] and [REDACTED] offer Masters' degrees in fields of computer-related study other than Computer Science, e.g., Information Technology and Computer Networking, and the submitted listings appear to identify courses that would support several degree programs, not just that in Computer Science. While we did note an overall similarity between the content of the beneficiary's coursework and the curriculum for the Master's program in Computer Science at the [REDACTED] we, nevertheless, found the correspondence of the beneficiary's coursework to a single U.S. Master's program in Computer Science to be insufficient to demonstrate that he had completed the curricula generally taught in graduate Computer Science programs at U.S. universities.

On May 6, 2014, counsel for the petitioner filed a combined Motion to Reopen and Motion to Reconsider, contending that we had improperly discounted the academic evaluations submitted by the petitioner to establish that the beneficiary holds the foreign equivalent of a Master's degree in Computer Science. Counsel further asserted that the petitioner was not provided with an opportunity to address the concerns raised in our April 3, 2014 decision regarding the reliability of the

evaluations provided by Professor [REDACTED] and Dr. [REDACTED]. To overcome our findings on appeal, counsel submitted a sixth evaluation of the beneficiary's academic qualifications, dated April 30, 2014, prepared by Dr. [REDACTED] Ph.D., Department of Computer and Information Science, [REDACTED]. He also provided statements from Dr. [REDACTED] and Professor [REDACTED] dated April 30, 2014 and May 1, 2014 respectively, affirming the accuracy of their prior evaluations. Counsel further offered a May 1, 2014 letter from Professor [REDACTED] who confirmed his own evaluation of the beneficiary's education, the authorship of which we had not questioned.

On July 24, 2014, we issued a Notice of Derogatory Information and Intent to Dismiss (NOID) to the petitioner, informing it that our review of Dr. [REDACTED]'s evaluation had found anomalies that raised questions as to whether it had been prepared by Dr. [REDACTED]. Specifically, we found the evaluation to bear an electronically-reproduced, computer-printed version of Dr. [REDACTED]'s signature; to have been issued on letterhead that did not reflect the changes made to the [REDACTED] logo in 2013; to be accompanied by an outdated curriculum vitae for Dr. [REDACTED] that reflected no articles or publications after 1996 and no professional activities after 2004; and to include a reference that indicated the evaluation was being provided by "[REDACTED]." To establish the evaluation as having been prepared by Dr. [REDACTED], the NOID asked the petitioner to submit a new, original evaluation, written on letterhead currently in use by [REDACTED], and signed and dated by Dr. [REDACTED]. The new evaluation was to be accompanied by a statement from Dr. [REDACTED] addressing the preceding issues and identifying the sources he had relied upon in determining that the beneficiary's MCA was the equivalent of a U.S. Master's degree in Computer Science. The NOID also requested a copy of the materials that Dr. [REDACTED] relied on to determine the course content of the beneficiary's Master's program and evaluate its equivalence.

The NOID also sought additional evidence of the beneficiary's employment experience with [REDACTED], the company at which the beneficiary claimed to have been employed as a Senior Systems Analyst/Consultant from November 20, 2003 until June 30, 2011. The previously submitted experience letter supporting the beneficiary's [REDACTED] employment was found insufficient to establish that employment, as it was not written on [REDACTED] letterhead or by an individual claiming to have been the beneficiary's manager. Moreover, the statement reflected that its author lived in New Jersey, while the beneficiary had worked for [REDACTED] in Chicago, and, further, that this individual had begun his own employment with [REDACTED] just 15 months prior to the beneficiary's June 2011 departure. To establish the beneficiary's employment with [REDACTED] the NOID requested a new, original employment letter from an [REDACTED] official with personal knowledge of the beneficiary's duties, written on [REDACTED] letterhead.

The NOID further raised concerns regarding the reliability of the May 1, 2014 statements from Professors [REDACTED] and [REDACTED]. It informed the petitioner that Professor [REDACTED] statement was written on stationery that did not include the "wordmark" and tagline routinely used on all [REDACTED] documents. It also indicated that Professor [REDACTED] statement appeared to have been written on photocopied letterhead and that the signature on this statement differed significantly from that on his 2013 evaluation.⁶

⁶ In its August 26, 2014 response to the NOID, the petitioner submitted statements from Professors [REDACTED] and [REDACTED],

The petitioner responded to the NOID on August 26, 2014. We will consider the petitioner's response along with the existing record.

Requirements for Motions to Reopen and Reconsider

The requirements for Motions to Reopen and Reconsider are found at 8 C.F.R. § 103.5(a):

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

Although we do not find the petitioner to have met the requirements for a Motion to Reconsider, the petitioner has stated new facts and submitted new evidence relating to the beneficiary's academic qualifications. Accordingly, we will grant the Motion to Reopen.

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

At the outset, it is important to discuss the respective roles of DOL and USCIS in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by DOL. DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

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

dated August 4, 2014 and August 13, 2014 respectively. In his statement, Professor [REDACTED] explains that he has the authority to use an alternately formatted [REDACTED] letterhead. His statement is supported by an August 5, 2014 letter from Associate Dean [REDACTED], Ph.D. of the [REDACTED] of Professional and Continuing Studies. In his August 13, 2014 statement, Professor [REDACTED] asserts that he routinely provides evaluations on photocopied letterhead and that such evaluations are valid. He further states that his signature on documents varies widely because he issues several dozen evaluations of foreign academic credentials a day and signs these reports quickly. Professor [REDACTED] use of photocopied letterhead in providing evaluations and the validity of such evaluations is supported by an August 13, 2014 statement from Dr. [REDACTED], Chair of the Department of Statistics/CIS at [REDACTED].

(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 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:

[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:

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

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 DOL's responsibility to determine whether there are qualified U.S. workers available to perform the duties of an offered position, and whether the employment of a beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if a beneficiary qualifies for the offered position, and whether an offered position and a beneficiary are eligible for the requested immigrant visa classification.

Beneficiary Qualifications

The only issue before the AAO is whether the beneficiary was qualified for the offered position as of the March 27, 2012 priority date.⁸

To establish that a beneficiary is qualified to perform the duties of an offered position, a petitioner must demonstrate that the beneficiary has met all of the requirements set forth in the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's*

⁸ As discussed above, the RFE issued on January 2, 2014, sought evidence of the petitioner's ability to pay the proffered wage. The petitioner's March 5, 2014 response, which included the submission of listings of its sponsored workers in 2012 and 2013, and the Forms W-2 issued to these individuals in 2012 and 2013, establishes its ability to pay the proffered wages of all its sponsored workers, including that of the beneficiary.

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 job offer portion of the labor certification to determine the required qualifications for the position, United States Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Part H. of the labor certification requires that, as of the March 27, 2012 priority date, the beneficiary hold a U.S. Master's degree in Computer Science or Engineering, or a foreign equivalent degree, and have six months of employment experience as a Computer Systems Analyst or a Senior Systems Analyst/Consultant, with proficiency in J2EE, JAVA, ASP.NET, PL/SQL and ORACLE. In Part K. of the labor certification, the beneficiary claims full-time employment as a Computer Systems Analyst with the petitioner since July 1, 2011, and as a Senior Systems Analyst/Consultant with [REDACTED] from November 20, 2003 until June 30, 2011.

As noted above, the record includes copies of the beneficiary's MCA degree from the Faculty of Engineering at [REDACTED] India, which the record indicates he completed as of April 1998, and his 1995 Bachelor of Science, which is also from [REDACTED]. Academic transcripts accompany the degree certificates. The record also contains an August 12, 2014 experience letter from the North America Field Human Resources Manager at [REDACTED] and a printout of an [REDACTED] employment screen relating to the beneficiary, submitted by the petitioner in response to our July 24, 2014 NOID. The letter reflects that the beneficiary was employed full-time by [REDACTED] from November 20, 2003 until July 1, 2011 as a Senior System Analyst. It lists the beneficiary's roles and responsibilities as: "[t]est manager/lead manage multiple Testing teams; [overall] Test Strategy preparation and get sign off from stakeholders of the project; [p]rovide direction, recommendation, and support for the Testing Leads; [u]nderstand the current Technical environment and support Test planning; [h]andling multiple projects in parallel; Master Test plan preparation; [w]ork plan preparation; [r]esource management; [d]efining and implementing Automation Frame work; [c]oordinate with SMEs of the application and define the automation requirements; [a]utomation feasibility analysis; and [e]stimating the work items. It further indicates that the beneficiary possessed the following skill set: "QTP, Quality [C]enter, Clear Case, Clear Quest, MS Project, Facets Health [C]are Product, J2EE, Java, Swing, CORBA, JSP, ASP.Net, C#, PL/SQL, Oracle, DB2, SQL Server, HTML, XML, VSML, C++, VC++, Web Services, CISCO [U]nified [C]ommunications, ETL and Main Frames."

Based on the above evidence, we find the record to establish that the beneficiary's previous employment with [REDACTED] provides him with the six months of experience and specific skills required by the labor certification. However, we continue to find that it does not demonstrate that his MCA from [REDACTED] provides him with a foreign degree that is the equivalent of a U.S. Master's degree in Computer Science.

To establish the beneficiary's MCA as a Master's degree in Computer Science, the petitioner has submitted six evaluations of the beneficiary's academic credentials. However, for the reasons already indicated, we have found that the five previously submitted evaluations, i.e., those prepared by [REDACTED] Professor [REDACTED], Professor [REDACTED], Dr. [REDACTED] and Professor [REDACTED], do not, independently or in the aggregate, overcome the credentials advice provided by EDGE. The sixth evaluation, that of Dr. [REDACTED] is discussed below.

On motion, as previously indicated, counsel protests against what he finds to be the improper discounting of the opinions of Dr. [REDACTED] and Professor [REDACTED] based on the similarity of the language found in their evaluations and also contends that the petitioner should have been provided with the opportunity to respond to the credibility concerns raised by these similarities prior to the issuance of our April 3, 2014 decision. He also asserts that we have wrongly relied on *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988) and *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988) in dismissing the appeal, as these cases may be distinguished from the petitioner's. Finally, counsel contends that an expert opinion "should only be doubted if a flaw is found in the actual findings of the expert or in the expert himself." He further states that "[d]ue to the special nature of expert opinion evidence, the similar and identical language in the provided expert opinion evidence does not merit [the] discounting of the expert opinion evidence." He asserts that the value of an expert "does not lie in the exact wording of what he says or how [he] writes it. His value lies entirely in his credibility That an expert has re-used the language of others is not relevant provided that the expert, himself is credible. His words need not be unique nor interesting, they must only be accurate." In support of counsel's assertions, the petitioner submits new statements from Professor [REDACTED] and Dr. [REDACTED] affirming their prior evaluations.

Counsel's assertion that we may somehow overlook the numerous identical passages in Professor [REDACTED] and Dr. [REDACTED] evaluations because an expert's reuse of another's language is not relevant "provided that the expert, himself is credible" ignores the point that an expert's use of another's language raises the issue of credibility. In this matter, we have found the extent of the identical language in Professor [REDACTED] and Dr. [REDACTED] evaluations to undermine their credibility in claiming to have reached independent findings and conclusions regarding the beneficiary's academic qualifications. To reestablish that credibility, the petitioner has submitted statements from Professor [REDACTED] and Dr. [REDACTED], dated May 1, 2014 and April 30, 2014 respectively, in which they affirm their findings concerning the beneficiary's degree equivalency and the independent bases of their determinations. However, neither statement rebuts nor explains the presence of multiple passages of identical language in their evaluations or the fact that some passages appear original to the March 11, 2013 evaluation prepared by Professor [REDACTED].⁹ Accordingly, Dr. [REDACTED] and Professor [REDACTED] statements do not rehabilitate their evaluations and we will not consider them to provide any additional credible evidentiary weight in this proceeding.

⁹ On motion, as previously indicated, the petitioner has also submitted a statement from Professor [REDACTED] affirming the independent nature of his March 11, 2013 evaluation of the beneficiary's academic qualifications. This statement is noted, although the independent nature of Professor [REDACTED] evaluation has not been questioned. Instead, as discussed above, we have found it to contain language that appears to have been later copied and incorporated into the evaluations prepared by Professor [REDACTED] and Dr. [REDACTED]

Counsel's assertion that we may not apply *Matter of Ho* and *Matter of Sea* in this matter is also unpersuasive.

Although counsel acknowledges that *Matter of Ho* and *Matter of Sea* provide that evidence may be discounted or reconsidered when it is found to raise doubt, to be inconsistent or otherwise questionable, he asserts that the present case does not raise the doubts, inconsistencies or questions considered in the preceding precedent decisions. Counsel maintains that as we found no inconsistency in the actual information provided in Professor [REDACTED] and Dr. [REDACTED] opinions, but instead raised concerns regarding the shared language of their evaluations, *Matter of Ho*, which deals with documentary inconsistencies in a case involving a family-based immigrant visa petition, does not apply here. He further asserts that *Matter of Sea* may not be used to discount Professor [REDACTED] and Dr. [REDACTED] opinions as *Matter of Sea's* discussion indicates that inconsistency in academic evaluations is to be judged against past precedent decisions on equivalency and the reasonableness of an evaluator's findings. Here, counsel asserts, Professor [REDACTED] and Dr. [REDACTED] opinions are consistent with our prior decisions on educational equivalency and our April 3, 2014 decision did not question the reasonableness of their equivalency determinations.

We are not, however, precluded from relying on *Matter of Ho* and *Matter of Sea* in this matter simply because the fact pattern in this case is different from those in the preceding decisions. A plain reading of the holding in *Matter of Ho*, which states that “[d]oubt cast on any aspect of the petitioner’s proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition,” *id.*, at 582, establishes that it is not limited to doubt resulting solely from inconsistencies, as counsel claims. Neither are we prevented from discounting an academic evaluation for reasons other than having identified inconsistencies in that evaluation. As stated in *Matter of Sea*, USCIS may discount or give less weight to an academic evaluation that “is in any way questionable.” *Id.*, at 820. We find the evaluations from Professor [REDACTED] and Dr. [REDACTED] to raise doubts and to be questionable because, as discussed previously, the petitioner provided them in support of its petition as independent evaluations purportedly documenting the authors’ individual research and conclusions. However, the identical language present in the evaluations indicates substantial portions of each evaluation were copied from another evaluation. We find Professor [REDACTED] and Dr. [REDACTED] presentation of another person’s work as their own to cast doubt on the credibility and independence of their evaluations.

Counsel’s assertion that, prior to issuing our April 3, 2014 decision, we were required to notify the petitioner of our concerns regarding Professor [REDACTED] and Dr. [REDACTED]’s evaluations is also unconvincing. We acknowledge that the regulation at 8 C.F.R. § 103.2(b)(16) requires:

- (i) Derogatory information unknown to petitioner or applicant. If the decision will be adverse to the applicant or petitioner and is based on derogatory information considered by [USCIS] and of which the applicant or petitioner is unaware, he/she shall be advised of this fact and offered an opportunity to rebut the information and present information in his/her own behalf before the decision is rendered, except as provided in paragraphs (b)(16)(ii), (iii), and (iv) of this section. Any explanation,

rebuttal, or information presented by or in behalf of the applicant or petitioner shall be included in the record of proceeding.

However, the presence of identical language in the evaluations prepared by Professor [REDACTED] and Dr. [REDACTED] cannot be characterized as derogatory information unknown to the petitioner. That the petitioner may not have apprised itself of this identical language does not alter the fact that it was the petitioner that willfully provided these evaluations under the assertion that they evidenced the beneficiary's qualifications for the offered position. A petitioner is responsible for any information provided in connection with an immigrant visa petition: "[b]y signing the [application or petition], the applicant or petitioner . . . certifies under penalty of perjury that the [application or petition], and all evidence submitted with it, either at the time of filing or thereafter, is true and correct." 8 C.F.R. § 103.2(a)(2). Accordingly, we were not, as counsel asserts, required to inform the petitioner of our concerns regarding the reliability of Professor [REDACTED] and Dr. [REDACTED] evaluations prior to our April 3, 2014 dismissal of the appeal because the petitioner had access to this information prior to the time that it provided the evaluations to us.

We now turn to a consideration of the April 30, 2014 evaluation prepared by Dr. [REDACTED] of [REDACTED] which was submitted by the petitioner in support of the Motion to Reopen.¹⁰

In his evaluation, Dr. [REDACTED] states that he has thoroughly analyzed both the course content and the length of the MCA program completed by the beneficiary and finds that "completion of this program is in fact comparable and substantially similar to the completion of a Master's Degree in Computer Science in the United States." While Dr. [REDACTED] acknowledges the EDGE credentials advice and states that it may be applicable in most cases, he maintains that it cannot account for every particular scenario, or serve as a substitute for a close review of particular academic transcripts. He contends that based on the specific courses and requirements completed by the beneficiary that Computer Science is "the most appropriate major for the equivalency."

Dr. [REDACTED] states that "[w]hen evaluating foreign academic degree programs as to their equivalent in the United States, the specific course content completed by a candidate and the duration of study must be closely examined in comparison with the specific course content and duration of study required by parallel degree programs in the U.S." (emphasis added). In support of his evaluation, Dr. [REDACTED] provides the [REDACTED] MCA curriculum that he has used to evaluate the beneficiary's coursework. This material provides the MCA course structure and "scheme of examination," as it existed in 2007-2008.¹¹ The submitted documentation outlines the courses required during each semester of the three-year program and offers specific descriptions of the course content as of 2007. These same materials also identify the text books and reference books for each course as of 2007.

¹⁰ We note the petitioner has submitted a corrected April 30, 2014 evaluation in response to our July 24, 2014 NOID. The new evaluation has been edited by Dr. [REDACTED] to correct the anomalies identified by the NOID. The evaluation is accompanied by Dr. [REDACTED] August 6, 2014 letter and an updated curriculum vitae, also as requested by the NOID.

¹¹ The curriculum indicates that the course structure and scheme of examination is listed "with effect from 2007-2008 admitted batch," which we understand to mean the curriculum requirements for students accepted by [REDACTED] MCA program for the 2007-2008 school year.

We note, however, that the beneficiary was awarded his MCA by ██████████ in 1998,¹² nearly ten years prior to the issuance of the MCA curriculum relied upon by Dr. ██████████ and no evidence in the record establishes that the content of the courses described in the 2007-2008 curriculum is the same as that taught at ██████████ in the late 1990s. Further, the majority of the beneficiary's courses are either not listed in the 2007-2008 curriculum or appear to have been reconfigured, i.e., combined courses taken by the beneficiary in the late 1990s appear as separate courses in the 2007-2008 curriculum. Dr. ██████████ did not indicate in his previous evaluation if he relied on this or another set of materials to make his determination. In the updated evaluation, Dr. ██████████ states that he reached his conclusions "through analyzing both the course content and length [of the beneficiary's MCA]." However, Dr. ██████████ does not discuss how the 2007-2008 course content compares to that in 1995-1998, and does not acknowledge that the materials he analyzed relate to an academic program that postdates the beneficiary's by nearly a decade. Accordingly, we do not find the 2007-2008 curriculum materials to provide support for Dr. ██████████ evaluation of the beneficiary's coursework.

Moreover, the February 24, 2014 statement from Dr. ██████████, submitted by the petitioner to establish that ██████████ considers the beneficiary's 1998 MCA to be a Computer Science degree, appears to contradict the conclusions reached by Dr. ██████████. While Dr. ██████████ states that both the MCA and the Master of Science in Computer Science (M.Sc) at ██████████ are Computer Science "courses" and that both cover the same Computer Science subjects, he also asserts:

[t]hat the major focus for both MCA and M.Sc is on programming in different areas: database, systems programming, networking and other integral aspects, which an IT professional should be proficient in.

In addition, [the] MCA also develop[s] a strong foundation in computing, business functioning and mathematics as applicable to information technology. It covers subjects like financial accounting, Organizational Behavior, Probability, Statistics & Queuing Theory which are not part of the M.Sc curriculum.

While comparing these two courses it is important to know as to what skills will be acquired at the end of the program. An MSc degree will [help] in getting just core IT with software-coding at various levels and layers, for a variety of systems. Whereas, an MCA degree gives the lead to both Computer science and computer systems management as the expertise gained is a mix of the two (with equal emphasis on Computer Programming and functional knowledge).

As per my observation, the IT job industry in India treats MCA as a better professional qualification as compared to MSc (Computer Science).

¹² Dr. ██████████ updated evaluation mistakenly states that the beneficiary completed his Bachelor of Science program "at ██████████ in April 2005." As noted above, the beneficiary's Bachelor of Science degree was awarded in 1995.

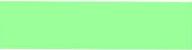
Therefore, while Dr. [REDACTED] may state that the MCA is considered a Computer Science degree by [REDACTED] he does not describe a U.S. degree in Computer Science, i.e., a degree in an academic field focused on the study of algorithms and advanced mathematics to manipulate and transform information. Instead, he indicates that both the MCA and the Master of Science in Computer Science at [REDACTED] involve the practical application of theoretical computer knowledge, suggesting that the beneficiary's MCA is most closely aligned with a U.S. degree in Management Information Systems, Computer Information Systems, or another business information management degree.¹³ We again note that the labor certification required a field of study in Computer Science or Engineering, but did not permit Information Science or management fields of study. Accordingly, Dr. [REDACTED] statement does not support Dr. [REDACTED] evaluation of the MCA as a U.S. Master's degree in Computer Science.

However, even if Dr. [REDACTED] statement did support Dr. [REDACTED] findings regarding the nature of the beneficiary's MCA, we would not find it persuasive. We note that the first paragraph of the statement includes two different type fonts, the second of which appears to have been inserted after the statement was initially written. Further, the right-hand margins of the paragraphs are inconsistent, as is the indentation of the statement's paragraphs. We also note that the signature block reflects Dr. [REDACTED] as [REDACTED], while the letterhead lists his name as [REDACTED]. Accordingly, Dr. [REDACTED] February 24, 2014 statement appears to have been altered and, therefore, casts doubt on the reliability of the information he provides. Doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, at 591-92.

Therefore, although we acknowledge Dr. [REDACTED] opinion, we do not, for the reasons just discussed, find his evaluation of the beneficiary's MCA to overcome the credentials advice provided by EDGE, which has found an Indian MCA degree to represent the attainment of a level of education comparable to a U.S. Master's degree in "computer application," i.e., a computer field involving the practical application of theoretical computer knowledge.¹⁴

¹³ We note that the August 19, 2013 evaluation prepared by Professor [REDACTED] also indicates that because of the number of "applied courses" in [REDACTED] MCA, it could "at the very least be considered a Master of Science in Computer Information Systems (CIS) as this degree is what will typically be equated for a Computing-related Curriculum that contains more applied than theoretical courses."

¹⁴ 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 United States 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.



Conclusion

For the reasons noted above, the record does not establish that the beneficiary's MCA is the foreign equivalent of a Master's degree in Computer Science issued by a regionally accredited university in the United States. Therefore, the record does not demonstrate that the beneficiary had the education required by the labor certification as of the March 27, 2012 priority date and he is not qualified for the offered position. Accordingly, we will affirm our prior decision and the petition will remain denied.

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 Motion to Reopen is granted. Our prior decision is affirmed. The petition remains denied.