



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE:

OFFICE: TEXAS SERVICE CENTER

FILE:

SEP 30 2014

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

The petitioner is a healthcare technology solutions company. It seeks to permanently employ the beneficiary in the United States as a “quality assurance analyst.” The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification.

### I. PROCEDURAL HISTORY

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).<sup>1</sup> The priority date of the petition is July 24, 2012.<sup>2</sup>

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

- H.4. Education: Master’s degree in Business Administration.
- H.5. Training: None required.
- H.6. Experience in the job offered: 12 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: [Blank].

Part J of the labor certification states that the beneficiary possesses a Master’s degree in Business Administration from [REDACTED] India, completed in 2005. The record contains a copy of the beneficiary’s Master’s degree in International Business from [REDACTED]. The record reflects that the beneficiary also possesses a Bachelor’s degree in Business Administration from [REDACTED] completed in 2003. The record contains a copy of the beneficiary’s bachelor’s and master’s degrees from [REDACTED] and transcripts for both degrees.

The director’s decision denying the petition concludes that the beneficiary’s education credentials do

<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).

<sup>3</sup> We note that the labor certification refers to this degree as a Master’s degree in Business Administration; however, the title on the English translation of the beneficiary’s degree is “Master of International Business.”

not constitute the equivalent of a U.S. master's degree as required for classification as an advanced degree professional. The director reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). 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." See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>4</sup>

According to EDGE, the beneficiary's three-year Bachelor of Business Administration degree is comparable to three years of university study in the United States, and the Master of Business Administration degree is comparable to a bachelor's degree in the United States.

The record contains the following evaluations regarding the beneficiary's educational credentials:

- By [REDACTED] for [REDACTED], dated July 28, 2011. Ms. [REDACTED] concludes that the beneficiary's bachelor's and master's degrees are equivalent to a "Bachelor's degree in International Business and a Master's degree in International Business from a regionally accredited college or university in the United States."
- By [REDACTED] for [REDACTED] on October 25, 2011. The evaluators provide a course-by-course evaluation of the beneficiary's bachelor's and master's degrees, concluding that the beneficiary's Bachelor's degree in Business Administration is "the equivalent of completion of three years of undergraduate study in Business Administration and related courses at a regionally accredited institution of higher education in the United States." The evaluators further conclude that the beneficiary's bachelor's degree, coupled with her Master's degree in International Business, is "the equivalent of the U.S. degrees of Bachelor of Business Administration and Master of Business Administration in International Business earned at a regionally accredited institution of higher education in the United States."

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<sup>4</sup> In *Confluence International, Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification required a degree and did not allow for the combination of education and experience.

- By [REDACTED] Vice President of [REDACTED] dated March 29, 2013, in which she states that “[i]n the United States a student can complete the Bachelor of Business Administration degree in four years and the Master of Business Administration degree in one year,” which she asserts is the same length of time as a three-year bachelor’s degree and a two-year master’s degree from India. She states, “We consider the first year of the master’s degree to be equivalent to our senior year of college and the second year to a one-year master’s degree in the United States.” Therefore, she concludes that a three-year Indian bachelor’s degree and a two-year Indian master’s degree together are “equivalent to the U.S. bachelor’s and master’s degree.”
- By [REDACTED] dated December 18, 2013. Dr. [REDACTED] states that he is the contributing author to the sections of the AACRAO EDGE database for India, Pakistan, and Sri Lanka. He provides a course-by-course evaluation and states that the beneficiary’s Bachelor of Business Administration degree is “comparable to 89 undergraduate semester credit hours” at an accredited U.S. college or university. He also states that the beneficiary’s Master of International Business degree is “comparable to completion of 32 undergraduate and 32.5 graduate semester credit hours” from an accredited U.S. college or university. Dr. [REDACTED] concludes that “the [beneficiary’s] combined Bachelor of Business Administration and Master of International Business degrees are comparable to a Master of Business Administration awarded by a regionally accredited college or university in the United States.”

The record contains a letter from [REDACTED] Director for Evaluations for [REDACTED] dated April 5, 2013, in which she states that “U.S. bachelor’s degrees in business administration require a minimum of 120 semester credits,” and that “U.S. master’s degrees in business fields typically require at least 30 semester credits of coursework.” Ms. [REDACTED] then concludes that the beneficiary has completed a minimum of 120 U.S. semester credits and a minimum of 30 U.S. semester credits. She cites several U.S. universities that offer five-year integrated MBA programs or one-year master degree programs. Ms. [REDACTED] concludes that “[t]he Indian Bachelor of Business Administration plus Master of International Business meets or exceeds the credit requirements for the equivalent of a U.S. bachelor’s degree and master’s degree equivalency.” We note that the evaluation from Ms. [REDACTED] differs significantly from that of Dr. [REDACTED] in asserting that the beneficiary’s undergraduate education is equivalent to 120 U.S. credits, while Dr. [REDACTED] assesses this same education as equivalent to only 89 U.S. credits. Despite this difference, they draw the same conclusion in assessing the total education as equivalent to a U.S. master’s degree. Nothing in the record explains these inconsistencies. Doubt cast on any aspect of the petitioner’s evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The record also contains a memorandum by [REDACTED] Vice President for Operations for [REDACTED] dated December 17, 2013, in which she responds to our November 27, 2013 notice of intent to dismiss (NOID) regarding the equivalency of the beneficiary’s bachelor’s and master’s degrees. In part, Ms. [REDACTED] states in this memorandum that 9 to 12 hours per semester are typical for those seeking

master's degrees. She also states that the beneficiary's undergraduate education is equivalent to 101 ½ U.S. credits, which also differs from the conclusions reached by Dr. [REDACTED] and Ms. [REDACTED]. Ms. [REDACTED] also states that Dr. [REDACTED], who she notes is an author of the Indian entry in EDGE, believes that "five years of postsecondary study in India is on par with U.S. master degrees." She states that "originally, EDGE changed [Dr. [REDACTED] equivalency recommendation of master's degree to 'bachelor's degree plus one year of graduate study,' and then a few years ago, changed it even further to 'bachelor's degree' *only*." (Emphasis in original). Ms. [REDACTED] has not provided any evidence to substantiate these alleged changes.

On appeal, counsel for the petitioner asserts that the evaluations in the record demonstrate that the beneficiary's education in India is the equivalent of a U.S. master's degree.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.<sup>5</sup> We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>6</sup> We may deny a petition that fails to comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision.<sup>7</sup>

## II. LAW AND ANALYSIS

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

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

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

<sup>5</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. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>6</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).

<sup>7</sup> See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003).

of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).<sup>8</sup> *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.

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<sup>8</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A).

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

The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

*Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984).

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

### **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 regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

In the instant case, the petitioner relies on the beneficiary's Master of International Business degree from [REDACTED] India, as being equivalent to a U.S. master's degree.

On November 27, 2013, we sent the petitioner a notice of intent to dismiss (NOID) regarding the conclusions of EDGE and requested additional evidence regarding the petitioner's ability to pay the beneficiary's proffered wage. On April 1, 2014, we sent the petitioner a request for evidence (RFE) because the record did not contain a copy of the beneficiary's bachelor's degree or the transcripts for this degree and the transcripts for the beneficiary's master's degree.

As noted above, the record contains evaluations of the beneficiary's educational credentials by [REDACTED] for [REDACTED]; by [REDACTED] for [REDACTED] Vice President of [REDACTED] and by [REDACTED]. The record also contains a letter from [REDACTED] Director for Evaluations for [REDACTED] and a memorandum from [REDACTED] Vice President for Operations for [REDACTED] regarding the equivalency of the beneficiary's educational credentials.

Each of these evaluations, the letter by Ms. [REDACTED] and the memorandum from Ms. [REDACTED] will be discussed in more detail below.

The evaluation by [REDACTED] concludes that the beneficiary's bachelor's and master's degrees are equivalent to a "Bachelor's degree in International Business and a Master's degree in International Business from a regionally accredited college or university in the United States." Ms. [REDACTED] does not state any reasons to support her conclusions as to why the beneficiary's degrees are equivalent to a U.S. bachelor's and a U.S. master's degree.

The evaluation by [REDACTED] for [REDACTED] and Associates provides a course-by-course evaluation of the beneficiary's bachelor's and master's degrees, concluding that the beneficiary's Bachelor's degree in Business Administration is "the equivalent of completion of three years of undergraduate study in Business Administration and related courses at a regionally accredited institution of higher education in the United States." The evaluators further conclude that the beneficiary's bachelor's degree, coupled with her Master's degree in International Business, is "the equivalent of the U.S. degrees of Bachelor of Business Administration and Master of Business Administration in International Business earned at a regionally accredited institution of higher education in the United States." We note that the grades and credit hours stated by the evaluators are substantially different than those stated by Dr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] discussed below. These inconsistencies tend to diminish the evaluations in the record. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

In the evaluation by [REDACTED] Vice President of [REDACTED] she disagrees with the EDGE's conclusion that a three-year Indian bachelor's degree and a two-year Indian master's

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<sup>9</sup> USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

degree is equivalent to a four-year bachelor's degree in the United States. Instead, she states that "[i]n the United States a student can complete the Bachelor of Business Administration degree in four years and the Master of Business Administration degree in one year," which is the same length of time as a three-year bachelor's degree and a two-year master's degree from India. She states, "We consider the first year of the master's degree to be equivalent to our senior year of college and the second year to a one-year master's degree in the United States." Therefore, she concludes that a three-year Indian bachelor's degree and a two-year Indian master's degree together are "equivalent to the U.S. bachelor's and master's degree." It is unclear why Ms. [REDACTED] concludes that the first year of the beneficiary's master's degree program is most similar to the senior year of college and that the second year is most similar to a one-year master's degree program. Ms. [REDACTED] does not cite to any authority and the record does not include any evidence to support this conclusion.

The evaluation by [REDACTED] provides a course-by-course evaluation and states that the beneficiary's Bachelor of Business Administration degree is "comparable to 89 undergraduate semester credit hours" at an accredited U.S. college or university. He also states that the beneficiary's Master of International Business degree is "comparable to completion of 32 undergraduate and 32.5 graduate semester credit hours" from an accredited U.S. college or university. Dr. [REDACTED] concludes that "the [beneficiary's] combined Bachelor of Business Administration and Master of International Business degrees are comparable to a Master of Business Administration awarded by a regionally accredited college or university in the United States." However, the grades and credit hours stated by Dr. [REDACTED] conflict with those of the evaluators for [REDACTED] as well as the evaluations from Ms. [REDACTED] and Ms. [REDACTED] as addressed specifically below. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-592.

In the letter from [REDACTED] Director for Evaluations for [REDACTED], she states that "U.S. bachelor's degrees in business administration require a minimum of 120 semester credits," and that "U.S. master's degrees in business fields typically require at least 30 semester credits of coursework." Ms. [REDACTED] then concludes that the beneficiary has completed a minimum of 120 U.S. semester credits and a minimum of 30 U.S. semester credits. She cites several U.S. universities that offer five-year integrated MBA programs or one-year master degree programs. Ms. [REDACTED] concludes that "[t]he Indian Bachelor of Business Administration plus Master of International Business meets or exceeds the credit requirements for the equivalent of a U.S. bachelor's degree and master's degree equivalency." Although the record reflects that some U.S. colleges and universities have one-year accelerated master's degree programs, nothing in the record reflects that Indian master's degrees are similarly accelerated programs, or that the beneficiary's program at [REDACTED] was such an accelerated program.<sup>10</sup>

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<sup>10</sup> The U.S. sample of accelerated degree programs in the record differ in credits for completion and some describe "advanced entry" requirements. The accelerated programs are all formulated slightly differently to compress more credits into a shorter time frame.

In the memorandum by [REDACTED] Vice President for Operations for [REDACTED] she states, in part, “in the U.S. it matters not whether one’s master degree required 30 or 45 or 50 credits—a master’s degree is a master’s degree.” Ms. [REDACTED] also states that 9 to 12 hours per semester is typical to those seeking master’s degrees. However, this conclusion is inconsistent with the evaluations in the record by Ms. [REDACTED] and Dr. [REDACTED]. Ms. [REDACTED] concludes that the first year of the beneficiary’s master’s degree program is equivalent to the senior year of college and “the second year to a one-year master’s degree in the United States.” Dr. [REDACTED] concludes that the beneficiary’s bachelor’s degree is comparable to 89 undergraduate semester credit hours at a U.S. college or university and that her master’s degree program is equivalent to 32 undergraduate and 32.5 graduate semester credit hours from a U.S. college or university. Thus, Dr. [REDACTED] would equate the beneficiary’s education in India to 153.5 semester credit hours at an accredited U.S. college or university. Ms. [REDACTED] states that the beneficiary’s undergraduate education is equivalent to 101 ½ U.S. credits and that “[the beneficiary] has completed 174 semester hours of undergraduate and graduate-level credit.” Ms. [REDACTED] ultimately concludes that the beneficiary has “the equivalent of a bachelor’s degree in international business and a master’s degree in international business.” The inconsistencies among these evaluations diminish their persuasiveness. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591-592.

Ms. [REDACTED] also states that Dr. [REDACTED], who she notes is an author of the Indian entry in EDGE, believes that “five years of postsecondary study in India is on par with U.S. master degrees.” She states that “originally, EDGE changed his equivalency recommendation of master’s degree to ‘bachelor’s degree plus one year of graduate study,’ and then a few years ago, changed it even further to ‘bachelor’s degree’ *only*.” (Emphasis in original). However, the record does not contain any evidence to substantiate these claims or any evidence that demonstrates Dr. [REDACTED] originally recommended in EDGE publications that a three-year bachelor’s degree and a two-year master’s degree from India are equivalent to a U.S. master’s degree. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)).

Therefore, after considering the inconsistencies and discrepancies in the evaluations provided, based on the conclusions of EDGE, the evidence in the record on appeal is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. master’s degree.<sup>11</sup> Instead, the beneficiary has the equivalent of a U.S. bachelor’s degree based on five years of study. Further, the labor certification does not allow for a bachelor’s degree and five years of experience as an alternative combination of education and experience, and the petitioner does not claim that the beneficiary possessed five years of post-baccalaureate experience in the specialty.

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<sup>11</sup> See *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010) (finding that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the beneficiary’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree).

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

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

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

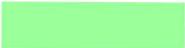
In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate about the beneficiary’s qualifications. *Madany*, 696 F.2d at 1015. 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.” *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve “reading and applying *the plain language* of the [labor certification].” *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification. Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 \*7 (D. Or. Nov. 30, 2006).

In the instant case, the labor certification states that the offered position requires a Master’s degree in Business Administration.

For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses a Master’s degree in Business Administration or the foreign equivalent thereof.

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



### III. CONCLUSION

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

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.