



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

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DATE: JUNE 30, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an information processing and manufacturing company, seeks to permanently employ the Beneficiary as a senior database administrator (Oracle) under the immigrant classification of advanced degree professional. See Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director, Texas Service Center, denied the petition. The Director found that the evidence of record did not establish that the Beneficiary possessed an advanced degree.

The matter is now before us on appeal. The Petitioner submits a letter and brief from counsel, along with additional documentation, and asserts that the Beneficiary has the requisite educational degree and experience to meet the requirements of the labor certification and qualify for classification as an advanced degree professional. Upon *de novo* review, we will dismiss the appeal.

I. CASE HISTORY

The instant petition, Form I-140, was filed on July 20, 2012. As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which was filed with the U.S. Department of Labor (DOL) on March 29, 2012, and certified by the DOL (labor certification). In Section H of the labor certification the Petitioner set forth the following pertinent requirements for the proffered position of senior database administrator (Oracle):

- | | | |
|------|---------------------------------------------------------------------|-------------------|
| 4. | Education: Minimum level required: | Master's degree |
| 4-B. | Major Field of Study: | related field |
| 5. | Is training required in the job opportunity? | No |
| 6. | Is experience in the job offered required? | Yes |
| 6-A. | How long? | 36 months |
| 7. | Is there an alternate field of study that is acceptable? | Yes |
| 7-A. | What field? | related |
| 8. | Is an alternate combination of education and experience acceptable? | Yes |
| 8-A. | Alternate level of education required: | Bachelor's degree |

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|-------|------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 8-C | Number of years experience acceptable: | five years |
| 9. | Is a foreign educational equivalent acceptable? | Yes |
| 10. | Is experience in an alternate occupation acceptable? | Yes |
| 10-A. | How many months? | 60 months |
| 10-B. | Job title of acceptable alternate occupation: | Database Administrator |
| 14. | Specific skills or other requirements: | Will accept single degree or any combination of degrees, diplomas, or professional credentials determined to be equivalent by a qualified evaluation service. |

Under applicable regulations the requirement of an advanced degree can be met with a U.S. bachelor's degree or a foreign equivalent degree followed by 5 or more years of progressive experience in the specialty. See 8 C.F.R. §§ 204.5(k)(2) and 204.5(k)(3)(i)(B). As evidence of the Beneficiary's education and experience the Petitioner submitted copies of the following documentation with the Form I-140 petition and in response to the Director's request for evidence (RFE):

- A Provisional Certificate and transcript from [redacted] in [redacted] India, both dated July 30, 2003, showing that the Beneficiary had qualified for a Bachelor of Business Administration (BBA) degree after passing the final examination in April 2003;
- A certificate and transcripts from the [redacted] in [redacted] and [redacted] India, showing that the Beneficiary was awarded a "Title of [redacted] in Systems Management" by [redacted] on August 31, 2004, "after two years of Instruction and one year of Professional Practice."
- Evaluations of the Beneficiary's educational credentials by [redacted] of [redacted] and [redacted] in [redacted] and [redacted] both of whom asserted that the Beneficiary's studies at [redacted] were equivalent to 3 years of study at a U.S. college or university, that the Beneficiary's [redacted] from the [redacted] was equivalent to 2 years of study at a U.S. college or university, and that the two credentials together were equivalent to a bachelor of science degree, with a dual major in computer science and business administration, from a U.S. college or university.
- Letters from two companies claiming to have employed the Beneficiary during the years 2005-2009 – including [redacted] which stated that it employed the Beneficiary as a technical associate in [redacted] India, starting on December 28, 2005, and in [redacted] from October 11, 2006 to February 16, 2007; as well as [redacted] in [redacted] Georgia, which stated that it (and [redacted]) employed the Beneficiary as a senior database administrator from February 19, 2007 to November 1, 2009.

On May 10, 2013, the Director denied the petition, determining that the Beneficiary did not possess the equivalent of an advanced degree and did not qualify for the job offered. The Director found that (1) the documentation of record did not establish that the Beneficiary's Indian education amounts to a foreign equivalent degree to a U.S. bachelor's degree, and (2) the letters from prior employers were insufficient to establish that the Beneficiary had 5 years of qualifying experience. The Director

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noted the labor certification's specification that the employer would accept a combination of degrees, diplomas, or professional credentials in lieu of a single degree, and concluded that this requirement was less than an advanced degree. Since the Petitioner did not show that the Beneficiary has at least a bachelor's degree and 5 years of progressive experience in the specialty, the Director found that he was not eligible for classification as an advanced degree professional.

The Petitioner filed a motion to reopen and a motion to reconsider (Receipt Number [REDACTED] [REDACTED] accompanied by supporting materials including an additional evaluation of the U.S. equivalency of the Beneficiary's Indian educational credentials by [REDACTED] of [REDACTED] [REDACTED]. On November 17, 2015, the Director issued a decision which dismissed the motion(s) and affirmed the original decision denying the petition.¹

The Petitioner filed the instant appeal on December 18, 2015, accompanied by copies of previously submitted materials. The Petitioner asserts that the Beneficiary has the requisite educational and experience credentials to qualify for classification as an advanced degree professional.

The issues on appeal are threefold: (1) Is "advanced degree professional" the proper visa category requested in the petition since the minimum educational requirement, as stated in box H.14 of the labor certification, is a combination of educational credentials deemed equivalent to a bachelor's degree, rather than a single U.S. or foreign equivalent degree? (2) Does the Beneficiary have a foreign equivalent degree to a U.S. bachelor's degree in a computer-related field? (3) Does the Beneficiary have at least five years of qualifying experience in the field of database administration?

II. LAW AND ANALYSIS

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

A United States employer may sponsor a foreign national for lawful permanent residence, which is a three-part process. First, the U.S. employer must obtain a labor certification, which the DOL processes. *See* 20 C.F.R. § 656 *et seq.* The labor certification states the position's job duties and the position's education, experience and other special requirements along with the required proffered wage and work location(s). The beneficiary states and attests to his or her education and experience. The DOL's role in certifying the labor certification is set forth at section 212(a)(5)(i) of the Act. The DOL's certification affirms that, "there are not sufficient [U.S.] workers who are able, willing, qualified" to perform the position offered where the beneficiary will be employed, and that the employment of such beneficiary will not "adversely affect the wages and working conditions of workers in the United States similarly employed." *See* section 212(a)(5)(A)(i) of the Act.

¹ Prior to the decision of November 17, 2015, the Director had issued a virtually identical decision dismissing the same motion(s) on April 16, 2015. The Petitioner filed an untimely appeal (Receipt Number [REDACTED]), which we rejected in a decision dated March 2, 2016. The Director did not explain the reason for issuing a second decision on the Petitioner's motion(s) to reopen and reconsider. In any event, the Petitioner's appeal of that decision is timely.

Following labor certification approval, a petitioner files a Form I-140, Immigrant Petition for Alien Worker, with U.S. Citizenship and Immigration Services (USCIS) within the required 180 day labor certification validity period. *See* 20 C.F.R. § 656.30(b)(1); 8.C.F.R. § 204.5. USCIS then examines whether: the petitioner can establish its ability to pay the proffered wage, the petition meets the requirements for the requested classification, and the beneficiary has the required education, training, and experience for the position offered. *See* section 203(b)(3)(A)(ii) of the Act; 8 C.F.R. § 204.5.²

Thus, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the job offered, 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 job offered under the terms of the labor certification, and whether the job offered and the beneficiary are eligible for the requested employment-based immigrant visa classification.

As previously noted, the I-140 petition in this case is accompanied by a labor certification, approved by the DOL, with a priority date of March 29, 2012.

B. Does the Requested Visa Classification of Advanced Degree Professional Accord with the Minimum Educational Requirement in the Labor Certification?

Under section 203(b)(2) of the Act immigrant classification may be granted 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 follows:

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

The regulation at 8 C.F.R. § 204.5(k)(4)(i) provides, in pertinent part, as follows:

Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor . . . The job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent.

² In the final step, the beneficiary would file a Form I-485, Application to Register Permanent Residence or Adjust Status, either concurrently with the I-140 petition based on a current priority date, or following approval of an I-140 petition and a current priority date. *See* 8 C.F.R. § 245.

In this case, the job offer portion of the labor certification (Part H of the ETA Form 9089) states that the minimum requirements for the proffered position are either a master's degree or a foreign equivalent in a field related to database administration (and 3 years of experience as a database administrator), or a bachelor's degree or a foreign equivalent and 5 years of experience as a database administrator. (See boxes H.3, H.4, H.4-B, H.6, H.6-A, H.8, H.8-A, H.8-C, H.9, H.10, H.10A, and H.10-B of the labor certification.) However, box H.14 modifies the educational requirements by stating that the employer "[w]ill accept single degree or any combination of degrees, diplomas, or professional credentials determined to be equivalent by a qualified evaluation service."

Thus, the labor certification specifically provides that a single master's degree or a single bachelor's degree is not required. Nor is a single foreign degree that is equivalent to a U.S. master's or bachelor's degree required. Rather, the minimum educational requirement of the labor certification can be met with a combination of lesser degrees, diplomas, and professional credentials which are determined by a credentials evaluation service to be the equivalent of a master's degree or a bachelor's degree. This minimum educational requirement does not square with the definition of "advanced degree" in 8 C.F.R. § 204.5(k)(2), which refers to degree in the singular (stating that an advanced degree means a U.S. degree or a foreign equivalent degree above a baccalaureate, and that a bachelor's degree means a U.S. baccalaureate or a foreign equivalent degree). The definition of "advanced degree" in 8 C.F.R. § 204.5(k)(2) does not extend to a combination of lesser educational credentials which only in their entirety may be equivalent to a U.S. master's degree or a U.S. bachelor's degree.

By its terms, therefore, the labor certification does not restrict consideration for the job offered to individuals holding a master's degree, or a bachelor's degree (and 5 years of experience), or a foreign equivalent degree to a U.S. master's or bachelor's degree. Since the educational requirements described on the ETA Form 9089 may be fulfilled with multiple educational credentials no one of which is equivalent to a U.S. master's or bachelor's degree, they do not correlate with the educational requirements for an advanced degree professional – the classification sought by the petitioner on the Form I-140. Accordingly, the job offer portion of the labor certification does not "demonstrate that the job requires a professional holding an advanced degree or the equivalent," as required in 8 C.F.R. § 204.5(k)(4)(i) for the instant petition to be approved. On this ground alone the petition must be denied.

C. Eligibility of the Beneficiary for Classification as an Advanced Degree Professional

Notwithstanding the lesser educational requirement of the labor certification, we will consider the Beneficiary's eligibility, in general, for classification as an advanced degree professional. Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification, *inter alia*, 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)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

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- (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.

The degree must also be from a college or university. For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.” We cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that a beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. See *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) per *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a “baccalaureate means a bachelor’s degree received from a college or university, or an equivalent degree [emphasis added].” 56 Fed. Reg. 30703, 30306 (July 5, 1991).³

In this case, the Petitioner asserts that the Beneficiary is eligible for classification as an advanced degree professional based on the foreign equivalent of a U.S. bachelor’s degree and 5 years of qualifying experience, and that his supporting documents meet the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B).

As previously discussed, the evidence submitted by the Petitioner includes a “Provisional Certificate” from [REDACTED] dated July 30, 2003, stating that the Beneficiary was qualified for a bachelor of business administration degree after passing the final examination in April 2003. While the Petitioner asserts that the BBA was a 3-year degree program, the university transcript (“Statement of Marks”) listing the Beneficiary’s courseload does not confirm this claim. The transcript – which refers to the degree as a “Bachelor of Business Administration (Non-Semester)” and states that the Beneficiary’s “College of Study” was the Directorate of Distance Education – appears to indicate that all of the “marks obtained” by the Beneficiary were in the years 2002 and 2003. Thus, the record does not show how many years of study were required for the Beneficiary to earn his BBA from [REDACTED].

The Petitioner has also submitted a document from the [REDACTED] showing that the Beneficiary received a “Title of [REDACTED] in Systems Management” from [REDACTED].

³ Cf. 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to foreign nationals of exceptional ability requiring the submission of “an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability”).

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██████████ on August 31, 2004. Accompanying transcripts indicate that the Beneficiary's program of study at the ██████████ included four semesters of coursework during the years 2000-2002.

On appeal the Petitioner cites the three evaluations of the Beneficiary's educational credentials – from ██████████ (dated February 2, 2007), ██████████ (dated January 9, 2013), and ██████████ (dated June 7, 2013) – as refuting the Director's finding that the Beneficiary does not have a foreign equivalent degree to a U.S. bachelor's degree. The first two evaluations – ██████████ and ██████████ -- claim that the Beneficiary completed a 3-year BBA program at ██████████ and a 2-year post-secondary program in systems management at the ██████████ and that these two credentials amounted to the equivalent of a 4-year bachelor's degree, with a dual major in computer science and business administration, from an accredited U.S. college or university. As previously discussed, however, the transcript from ██████████ does not confirm the claim that the Beneficiary's BBA at ██████████ was a 3-year degree program, or even a 2-year program. Thus, the conclusions of both ██████████ and ██████████ that the Beneficiary has 5 years of post-secondary study (a primary basis for their assertion that he has the equivalent of a 4-year U.S. bachelor's degree) are not supported by the record.

USCIS may, in its discretion, use statements submitted as expert testimony as advisory opinions. When such opinions are not in accord with other information or are in any way questionable, however, USCIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

In addition to their unsupported assertions regarding the length of the Beneficiary's BBA program, the ██████████ and ██████████ evaluations have other analytical shortcomings. Both refer to the ██████████ program in systems management as a post-secondary program, which would indicate that entry into the program did not require a 2-year or 3-year bachelor's degree or any other particular post-secondary credential. This deduction draws added weight from the fact that the Beneficiary did not enter the systems management program at the ██████████ after earning his BBA from ██████████. The transcripts from the two institutions indicate that the Beneficiary was studying at the ██████████ in the years 2000-2002 and at ██████████ in the years 2002-2003. Thus, it appears that the Beneficiary may have studied at both institutions simultaneously, and that his studies at the ██████████ began before his studies at ██████████. Therefore, the record does not show that the Beneficiary's 2-year program in systems management at the ██████████ followed and built upon his BBA from ██████████. It indicates instead that the Beneficiary's bachelor of business administration and his "Title of ██████████ in Systems Management" are independent and free-standing post-secondary credentials which do not add up to a higher level U.S. educational equivalency.

As another resource to assess the U.S. equivalency of the Beneficiary's education, we have accessed the Educational 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 more than 40 countries." AACRAO, <http://www.aacrao.org/home/about> (last accessed March 31, 2016). "Its mission is to provide professional development, guidelines, and voluntary standards to

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be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” AACRAO EDGE, <http://edge.aacrao.org/info.php> (last accessed March 31, 2016). USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

In its section on Indian educational credentials, EDGE advises that a bachelor’s degree in business administration (BBA) is awarded upon completion of 2 to 3 years of tertiary study beyond the Higher Secondary Certificate (equivalent to a high school diploma in the United States), and is comparable to 2 to 3 years of university study in the United States. In the instant petition, as previously discussed, the record does not establish that the Beneficiary’s BBA included more than 2 years of study, and may not have included even that amount. Based on the evidence of record, therefore, we cannot conclude that the Beneficiary’s BBA is comparable to more than 2 years of study at a U.S. college or university. Even if we were to accept the Petitioner’s claim, *arguendo*, that the Beneficiary’s BBA from [REDACTED] was a 3-year degree, EDGE advises (and the Petitioner concurs) that it would only be equivalent to 3 years of university study in the United States, not a U.S. bachelor’s degree. The standard length of a U.S. bachelor’s degree is 4 academic years. *See Matter of Shah*, 17 I&N Dec. 244 (Reg’l Comm’r. 1977).

EDGE also advises that a post-secondary diploma in India is awarded upon completion of 1 to 2 years of tertiary study beyond the Higher Secondary Certificate, and is comparable to 1 year of university study in the United States. This credential accords with the [REDACTED] and [REDACTED] evaluations’ description of the Beneficiary’s [REDACTED] program in systems management as a post-secondary program. EDGE also advises that a post-secondary diploma should not be confused with a post-graduate diploma (PGD), which requires a 3-year bachelor’s degree to enter the program. In the instant petition, the evidence of record does not show that a 3-year bachelor’s degree was required for entry into the [REDACTED] 2-year program in systems management. As far as the record shows, the Beneficiary entered the [REDACTED] program even before he began studying at [REDACTED] for his BBA. Therefore, there is no basis to find that the Beneficiary’s [REDACTED] credential is anything other than a post-secondary diploma, or comparable to more than 1 year of study at a U.S. college or university.

The third evaluation, from [REDACTED] repeats the unsupported claims of [REDACTED] and [REDACTED] that the Beneficiary’s BBA was a 3-year degree, but differs from the other evaluations in claiming that the Beneficiary’s “Title of [REDACTED] in Systems Management” from [REDACTED] was a 2-year PGD, not a post-secondary diploma. This distinction is important because EDGE advises that a PGD following a 3-year bachelor’s degree in India is comparable to a bachelor’s degree in the United States, providing that a 3-year bachelor’s degree was required to enter the PGD program. [REDACTED] asserts that the Beneficiary studied for his BBA from 2000 to 2003, but submits no corroborating evidence that the studies lasted 3 years. As previously indicated, the Beneficiary’s transcript appears to list courses in 2002 and 2003 only. [REDACTED] then asserts that after completing his BBA the Beneficiary entered the [REDACTED] program in systems management at the level of a third- or fourth-year university student. That scenario conflicts with the Beneficiary’s [REDACTED] transcripts, however, which show that he completed four semesters of study in the years 2000-2002. [REDACTED] offers no explanation for these factual inconsistencies, which also undermine his claim that the [REDACTED] program is a PGD since the Beneficiary appears to have been

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studying at the [redacted] at the same time, and perhaps even earlier, than he was studying at [redacted] for his BBA. Thus, the record does not establish that a BBA was required for the Beneficiary to enter the [redacted] program. Accordingly, [redacted] claim that the Beneficiary's credential from the [redacted] program was a PGD is unsubstantiated. Like the [redacted] and [redacted] evaluations, therefore, the [redacted] evaluation has little evidentiary weight in this proceeding.

Further undermining all three evaluations are the assertions by [redacted] and [redacted] that the [redacted] had university status when it awarded the Beneficiary's "Title of [redacted] in Systems Management" in 2004. Documentation submitted by the Petitioner shows that [redacted] was founded in 1981 as an institution to provide training in information technology, banking, finance, insurance, communication skills, and management. Over the years [redacted] entered agreements with various universities which allowed its 1-year diploma and [redacted] students to pursue university degrees with advanced standing at those institutions. [redacted] was founded at [redacted] in [redacted] on April 3, 2010. See [redacted] (last accessed on April 20, 2016). Thus, [redacted] did not exist when the Beneficiary earned and received his "Title of [redacted] in Systems Management" during the time frame of 2000-2004. Neither this credential from the [redacted] nor the associated transcripts were issued by [redacted] in [redacted] but rather by [redacted] in [redacted] and [redacted]. Therefore, the Beneficiary's [redacted] credential is not a degree from a college or university, does not accord with the regulatory requirements of 8 C.F.R. § 204.5(l)(3)(ii)(C), and is not equivalent to any years of study at a U.S. college or university.

Based on the foregoing analysis, we are not persuaded by the educational equivalency evaluations of [redacted] and [redacted] or any other evidence in the record, that the Beneficiary's educational credentials from [redacted] and the [redacted] in India, either individually or collectively, are equivalent to a bachelor's degree from a U.S. college or university.

Turning to the Beneficiary's experience, the regulation at 8 C.F.R. § 204.5(g)(1) states the following with respect to the documentary evidence required:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

No new evidence has been submitted by the Petitioner since the Director's denial decision was issued. Accordingly, the record includes the following documentation of the Beneficiary's experience:

- A letter to USCIS from [redacted] in [redacted] Colorado, dated May 16, 2016, in support of its request for an H-1B visa to employ the instant Beneficiary as a database administrator.
- A letter from [redacted] in [redacted] Colorado, signed by [redacted] Authorized Signatory, and dated October 9, 2006, stating that the Beneficiary had been an employee since December 28, 2005, had recently transferred to the United States, and would be based in [redacted]

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- A letter from [REDACTED] in [REDACTED] Texas, signed by [REDACTED] Manager Human Resources, and dated October 17, 2008, stating that the Beneficiary was a full-time employee from October 11, 2006 to February 16, 2007.
- A letter from [REDACTED] in [REDACTED] Georgia, signed by [REDACTED] Human Resources Manager, and dated July 25, 2011, stating the Beneficiary was employed by [REDACTED] and [REDACTED] as senior database administrator from February 19, 2007 to November 1, 2009.
- An affidavit from [REDACTED] dated December 21, 2012, stating that he worked for [REDACTED] in India and the United States from 2005 to 2008, and was a co-worker of the Beneficiary when the latter was employed at [REDACTED] as database administrator from December 2005 through February 2007. [REDACTED] described the job duties performed by the Beneficiary.

None of these letters meets the substantive requirements of the regulation at 8 C.F.R. § 204.5(g)(1). The first three letters did not describe any of the duties performed by the Beneficiary, and the second letter did not even identify his job title. While the fourth letter did provide a detailed description of the duties performed by the Beneficiary, the letter was not written by an authorized representative of the employer, but rather by a co-worker who apparently has no current connection with the company. Moreover, even if all of the letters met the requirements of 8 C.F.R. § 204.5(g)(1), they only account for 3 years and 10 months of employment – from December 28, 2005 to November 1, 2009. That is less than the 5 years required, when combined with a U.S. baccalaureate degree or a foreign equivalent degree, to meet the definition of “advanced degree” in 8 C.F.R. § 204.5(k)(2),

Therefore, neither the Beneficiary’s education nor his experience satisfy the criteria for an “advanced degree” in 8 C.F.R. § 204.5(k)(2). Accordingly, the Beneficiary is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act. For this reason as well, the petition must be denied.

D. Minimum Requirements of the Labor Certification

To be eligible for approval under the immigrant visa petition, the Beneficiary must have all the education, training, and experience specified on the underlying labor certification as of the petition's priority date, which is the date the labor certification application was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg'l Comm'r 1977). The priority date of the instant petition is March 29, 2012.

The key to determining the qualifications for the proffered position is found in Part H of the ETA Form 9089, which describes the terms and conditions of the job offered. It is important that the labor certification be read as a whole. In this case, Part H establishes alternate minimum requirements for the proffered position of senior software developer, which are either:

- A master’s degree in a field related to database administration, or a foreign educational equivalent, plus three years of experience as a database administrator (ETA Form 9089, boxes H.3, H.4, H.4-B, H.6, H.6-A, H.7, H.7-A, H.9, H.10, and H.10-B); or

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- A bachelor's degree in a field related to database administration, or a foreign educational equivalent, plus five years of experience as a database administrator (ETA Form 9089, boxes H.3, H.8, H.8-A, H.8-C, H.9, H.10, H.10-A, and H.10-B); or
- With respect to the minimum educational requirements – a single degree or any combination of degrees, diplomas, or professional credentials determined to be equivalent to a master's degree or a bachelor's degree in a field related to database administration (ETA Form 9089, box H.14).

The Beneficiary does not have either a U.S. master's degree or a U.S. bachelor's degree or a foreign equivalent degree in a field related to database administration. Rather, he has a bachelor of business administration from [REDACTED] which is comparable, as far as the record shows, to no more than 2 years of university study in the United States, not a full U.S. bachelor's degree. He also has a credential from the [REDACTED] – a "Title of [REDACTED] in Systems Management" – which is not a college or university degree and has no equivalency to university study in the United States. Nor does the record include any persuasive determination by an educational evaluation service that the Beneficiary's credentials, either individually or in combination, are equivalent to a U.S. master's degree or a U.S. bachelor's degree in a field related to database administration. Finally, the evidence of record does not establish that the Beneficiary has any qualifying experience.

Thus, the Petitioner has not established that the Beneficiary meets any of the alternate minimum educational and experience requirement of the labor certification. Therefore, the Beneficiary does not qualify for the job of senior database administrator (Oracle) under the terms of the labor certification. On this additional ground the petition must be denied.

III. CONCLUSION

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

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

ORDER: The appeal is dismissed.

Cite as *Matter of I- Corp.*, ID# 17679 (AAO June 30, 2016)