



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

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

In Re: 07868505

DATE: APR. 3, 2020

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for an Advanced Degree Professional

The Petitioner, an online payment company, seeks to employ the Beneficiary as a “manager, information management 3, SAP & other support.” It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition on the ground that the Petitioner did not establish that the Beneficiary has the requisite educational credential to meet the terms of the labor certification and to qualify for classification as an advanced degree professional.

On appeal the Petitioner submits a brief and supporting materials and asserts that the evidence of record establishes that the Beneficiary has the requisite education to qualify for the proffered position and the requested classification.

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. Upon *de novo* review, we will dismiss the appeal.

## I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

The term “advanced degree” is defined in the regulation at 8 C.F.R. § 204.5(k)(2) 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.

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

- (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, a beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition’s priority date.<sup>1</sup> *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

## II. ANALYSIS

### A. Requirements for Classification as an Advanced Degree Professional

The Petitioner asserts that the Beneficiary qualifies for advanced degree professional classification by virtue of a foreign equivalent degree to a U.S. baccalaureate degree and more than five years of post-baccalaureate experience in the specialty, in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). In his decision the Director found that the Beneficiary had more than five years of qualifying experience. The issue on appeal is whether the Beneficiary has a U.S. or foreign equivalent bachelor’s degree.

Section J of the labor certification states that the Beneficiary’s highest level of education relevant to the job offered is a bachelor’s degree in accounting from the University of [redacted] in [redacted] India, completed in 1998. As evidence of this credential the Petitioner submitted copies of a degree certificate and transcripts showing that the Beneficiary was awarded a bachelor of commerce degree, specializing in financial accounting and auditing, from the University of [redacted] in December 1995, after completion of a three-year academic program. The Petitioner also submitted documentary evidence that the Beneficiary passed a series of courses and examinations with The Institute of Chartered Accountants of India (ICAI) which culminated in a certificate of membership and a certificate of practice in the ICAI in August 1998. In addition, the Petitioner submitted two academic

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<sup>3</sup> The priority date of the petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). In this case the priority date is December 19, 2017.

equivalency evaluations, the first from The Trustforte Corporation (Trustforte evaluation) asserting that the Beneficiary's passage of the ICAI final examination and associate membership in the ICAI, following his three-year bachelor of commerce from the University of [redacted] was equivalent to a four-year bachelor's degree in accounting from an accredited U.S. college or university; and the second from a professor at [redacted] in New York ([redacted] evaluation) asserting that the Beneficiary's associate membership in the ICAI by itself was equivalent to a four-year bachelor of science in accounting from an accredited U.S. college or university.

In denying the petition, the Director found that the Beneficiary's certificate of membership in the ICAI is comparable to a bachelor's degree in the United States, but that the Petitioner did not establish that the ICAI is an academic institution that can confer a degree with an official college or university record. The Director cited the regulations at 8 C.F.R. § 204.5(k)(3)(i)(B), which requires an "official academic record" showing that the Beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree, and 8 C.F.R. § 204.5(l)(3)(ii)(C), which requires an "official college or university record" to show that the Beneficiary has a U.S. baccalaureate or foreign equivalent degree. The Director also found that the Beneficiary's three-year bachelor of commerce degree from the University of [redacted] was not equivalent to a U.S. bachelor's degree, which generally requires four years of education, citing *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). The Director concluded, therefore, that the Beneficiary did not have a U.S. baccalaureate or a foreign equivalent degree, as required to qualify for advanced degree professional classification.

On appeal, the Petitioner resubmits a copy of the [redacted] evaluation which evaluated the Beneficiary's courses and examinations at the ICAI as equivalent to four years of bachelor's level academic studies in accounting as a U.S. college or university, and the associate membership certificate in the ICAI as equivalent to a U.S. bachelor's degree. While the [redacted] evaluation refers to the Beneficiary's associate membership credential from the ICAI as a "bachelor's level degree" representing at least four years of academic study, it is important to note that the ICAI is a professional association, not a college or university, and that it oversees the accounting profession in India but does not award academic degrees like a college or university. The Beneficiary's "Certificate of Membership" from the ICAI does not claim to be a degree. While passage of the ICAI final examination and associate membership in the ICAI may be comparable to a U.S. baccalaureate or a foreign equivalent degree for some purposes, these credentials do not constitute a foreign equivalent degree to a U.S. baccalaureate degree as required under the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) to qualify the Beneficiary for classification as an advanced degree professional under section 203(b)(2) of the Act.

The Petitioner asserts that the [redacted] evaluation accords with the credential advice provided in the Electronic Database for Global Education (EDGE),<sup>2</sup> created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).<sup>3</sup> EDGE states that a three-year bachelor of commerce degree in India is comparable to three years of university study in the United States.

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<sup>2</sup> EDGE is described on its registration page as "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (last visited March 2, 2020).

<sup>3</sup> AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions in over 40 countries." <http://www.aacrao.org/who-we-are> (last visited March 2, 2020).

EDGE also states that association membership in ICAI is a credential awarded after two years of study beyond the ICAI intermediate examination and passage of the ICAI final examination, and that ICAI membership represents “a level of education comparable to a bachelor’s degree in the United States.” [edge.aacrao.org/country/credential/institute-of-chartered-accountants-of-india-icai-final-exam-and-award-of-association-membership?cid=single](http://edge.aacrao.org/country/credential/institute-of-chartered-accountants-of-india-icai-final-exam-and-award-of-association-membership?cid=single). Educational comparability to a U.S. bachelor’s degree, however, does not make the ICAI membership certificate a “foreign equivalent degree” to a U.S. baccalaureate degree, as required by 8 C.F.R. § 204.5(k)(3)(i)(B) to qualify the Beneficiary for advanced degree professional classification.

Evaluations of academic credentials by evaluation services or individual experts are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm’r 1988). For the reasons discussed above, we conclude that the [redacted] evaluation does not establish that the Beneficiary’s certificate of membership from the ICAI constitutes a foreign equivalent degree to a U.S. bachelor’s degree.<sup>4</sup>

Finally, the Petitioner cites a non-precedent decision by the AAO in 2010 in which we found that the beneficiary held the equivalent of a U.S. bachelor’s degree based on a three-year bachelor’s degree from an Indian university followed by the passage of the ICAI final examination and associate membership in the ICAI, and therefore met the labor certification’s minimum educational requirement of a bachelor’s degree. That finding appears to be legally incorrect under 8 C.F.R. § 204.5(k)(3)(i)(B) insofar as such credentials would not constitute a foreign equivalent degree to a U.S. baccalaureate. The AAO is not bound by its non-precedent decisions,<sup>5</sup> and we note that in numerous other appeals we have adjudicated involving the ICAI we have consistently concluded that a three-year bachelor’s degree from an Indian university followed by the passage of the ICAI final examination and associate membership in the ICAI is not equivalent to a U.S. baccalaureate degree.<sup>6</sup> Furthermore, the language cited by the Petitioner in our 2010 decision was dicta because the appeal was dismissed on the ground that the minimum educational and experience requirements of the labor certification did not support the petition for advanced degree professional classification.

Based on the foregoing analysis we conclude that the Petitioner has not established that the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate degree.

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<sup>4</sup> Though the Trustforte evaluation is not discussed by the Petitioner on appeal, we conclude that it too fails to establish that the Beneficiary has a foreign equivalent degree to a U.S. baccalaureate because, like the [redacted] evaluation, it relies on a finding that the Beneficiary’s certificate of membership from the ICAI is a degree.

<sup>5</sup> Like the rest of USCIS, we are bound by the Act, agency regulations, precedent decisions of the agency, and published decisions of the federal court of appeals from whatever circuit that the action arose. *See N.L.R.B. v Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp. 2d 1014, 1022 (D. Haw. 2000), *aff’d*, 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the Administrative Procedure Act, even when they are published in private publications or widely circulated).

<sup>6</sup> *See Matter of A-D-S-, LLC*, ID# 16697 (AAO June 2, 2016); *Matter of S-W-T-, Inc.*, ID# 2091080 (AAO Dec. 6, 2018). *See also Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 \*11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that membership in the Institute of Chartered Accountants of India (ICAI), was not a college or university “degree” for purposes of classification as a member of the professions holding an advanced degree).

## B. Minimum Requirements of the Labor Certification

Section H of the labor certification states that the minimum requirements for the job offered are a bachelor's degree or a foreign educational equivalent in business administration, finance, accounting, or a closely related quantitative discipline, and six years of experience in the job offered or a related job in the field of financial or business analysis.

The Director found that the Beneficiary met the experience requirement of the labor certification, but did not meet the minimum educational requirement because he did not have a U.S. baccalaureate degree or a foreign equivalent degree in one of the requisite fields of study. On appeal the Petitioner asserts that the Beneficiary's ICAI membership certificate, following his three-year bachelor's degree from an Indian university, constitutes such a degree in accordance with the labor certification. As previously discussed, however, the ICAI is not a degree-granting institution and its membership certificate is not a foreign equivalent degree<sup>7</sup> to a U.S. baccalaureate degree in accounting. Therefore, the Beneficiary does not meet the minimum educational requirement of the labor certification.

## III. CONCLUSION

We will dismiss the appeal because the Petitioner has not established that the Beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree, as required to qualify for classification as an advanced degree professional and to meet the minimum educational requirement of the labor certification.

**ORDER:** The appeal is dismissed.

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<sup>7</sup> The labor certification requires at a minimum a U.S. bachelor's degree or a foreign educational equivalent, which in this case is a foreign equivalent *degree*. If we were to interpret the labor certification to allow for less than a foreign equivalent degree, the labor certification would not support the requested classification of advanced degree professional. *See* 8 C.F.R. § 204.5(k)(4)(i).