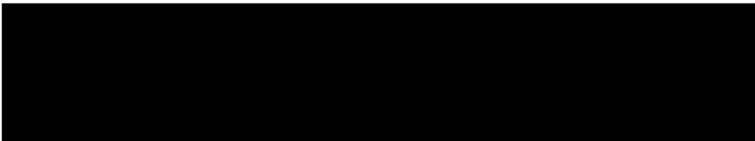


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy
PUBLIC COPY

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

Date: DEC 27 2011 Office: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to
Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:
Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a laundry company.¹ It seeks to employ the beneficiary permanently in the United States as a computer programmer, O*Net-SOC job code 15-1021.00 (computer programmers). As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition, finding that the petitioner had failed to show that the beneficiary met the educational requirements for the job offered.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's September 20, 2008 decision, the single issue in this case is whether the beneficiary met the requisite educational requirement before the priority date.

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. See *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In evaluating the beneficiary's qualifications, USCIS must look to 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

¹ According to the petitioner's website ([http://www. \[REDACTED\]](http://www. [REDACTED])), [REDACTED] has been providing [REDACTED] industry since [REDACTED].

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 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).

it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Madany v. Smith*, 696 F.2d, 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).

In this case, the petitioner filed the Form ETA 9089 with the DOL for processing on June 13, 2006. The name of the job title or the position for which the petitioner seeks to hire is "Computer Programmer." The petitioner further set the following requirements under part H:

Education: minimum level required:	Bachelor's
Major Field of study:	Engineering
Is training required in the job opportunity?	No
Is experience in the job offered required for the job?	Yes, 24 months (2 years)
Is there an alternate combination of education and experience that is acceptable?	No
Is a foreign educational equivalent acceptable?	Yes
Is experience in an alternate occupation acceptable?	No

Under part H.11, job duties, the petitioner wrote:

Develop and implement software for structural engineering. Develop AutoLISP and Visual BASIC applications for Structural Engineering and develop software development tools for use in Structural Detailing Projects. Create project specific custom menus in AutoCAD. Update/add AutoLISP programs as per requirement for different projects.

To show that the beneficiary has a bachelor's degree in engineering and two years of work experience in the job offered, the petitioner submitted copies of the following evidence:

- The beneficiary's educational evaluation prepared and signed by [REDACTED] of Morningside Evaluations and Consulting on March 5, 2001;
- The beneficiary's diploma and transcripts from Bhailalbai and Bhikhabhai Institute Technology (formerly known as Bhailalbai and Bhikhabhai Polytechnic); and
- Various letters of employment from the beneficiary's former employers.

The educational evaluation states that the beneficiary has satisfied requirements substantially similar to those required toward the completion of two years of academic studies leading to a Bachelor's Degree from an accredited institution of higher education in the United States. The evaluation also states that the beneficiary has the equivalent of a Bachelor of Science in computer science from an accredited U.S. institution based on a combination of his education and his progressively responsible work experience.

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, where an opinion is not in accord with other information or is in any way questionable, USCIS is not

required to accept or may give less weight to that evidence. *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)).

It appears that the evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). The beneficiary was required to have a bachelor's degree on the ETA Form 9089. The petitioner's actual minimum requirements could have been clarified or changed before the ETA Form 9089 was certified by the DOL. Since that was not done, the director's decision to deny the petition must be affirmed.

Further, the AAO has 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* [REDACTED] (last accessed November 30, 2011). 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." [REDACTED] (last accessed November 30, 2011). Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.³ If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁴

³ *See An Author's Guide to Creating AACRAO International Publications* available at [REDACTED].

⁴ 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 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

According to EDGE, an Indian Diploma of Engineering is awarded upon completion of three years of study beyond the Secondary School Certificate (or equivalent), and it represents attainment of a level of education comparable to up to one year of university study in the United States. Therefore, the AAO agrees with the director that, based on the evidence submitted, the beneficiary in this case does not appear to have a bachelor's degree or foreign degree equivalent to a U.S. bachelor's degree as required by the terms of the labor certification, and further concludes that the beneficiary is not qualified for the job offered.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

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 itself required a degree and did not allow for the combination of education and experience.