

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 19 2012** OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

[REDACTED]

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (the director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a community health center.¹ It seeks to permanently employ the beneficiary in the United States as a patient care technician. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition or that the beneficiary possessed the minimum education required to perform the offered position by the priority date. The director denied the petition accordingly.

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 March 25, 2009 denial, the issues in this case are whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence and whether the beneficiary possessed the minimum education required to perform the offered position by the priority date.

The record shows that the appeal is properly filed 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.

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.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

¹ Corporate documents establish that the petitioner changed its name from Community Health of South Dade, Inc. to Community Health of South Florida in 2007.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Acting Reg'l Comm'r 1977).

Here, the Form ETA 750 was accepted on December 4, 2002. The proffered wage as stated on the Form ETA 750 is \$906.24 biweekly, which is \$23,562.24 per year. The Form ETA 750 states that the position requires a four (4) year college degree in medicine, graduation from an approved medical assistant program in the State of Florida, a certificate from an approved medical assistant or nursing assistant program and computer literacy. The Form ETA 750 states that for the position one-two years of experience in a medical setting and CPR certification is desired.

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 On appeal, counsel submits a brief, copies of frequently asked questions (FAQs) in regard to registration as a medical assistant, copies of Florida statutes pertaining to medical assistants, a letter from the petitioner, and copies of the petitioner's quarterly statements of deposits and filings, Forms 941, for 2009.

The evidence in the record of proceeding shows that the petitioner is a tax exempt corporation. On the petition, the petitioner claimed to have been established in 1971 and to currently employ 489 workers. According to the tax returns in the record, the petitioner's fiscal year begins on October 1 and ends on September 30. On the Form ETA 750B, signed by the beneficiary on June 18, 2003, the beneficiary did not claim to have worked for the petitioner.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances

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).

affecting the petitioning business will be considered if the evidence warrants such consideration. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage at any time. The petitioner did not claim to have employed the beneficiary and did not submit Forms W-2, Wage and Tax Statements, for the beneficiary.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. See *Taco Especial v. Napolitano*, 696 F. Supp. 2d at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation, the court in *River Street Donuts* noted:

The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of

funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.

We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 118. "[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support." *Chi-Feng Chang* at 537 (emphasis added).

The record before the director closed on December 1, 2009 with the receipt by the director of the petitioner's submission in response to the director's request for evidence. As of that date, the petitioner's 2009 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2008 would be the most recent return available. The petitioner's tax returns, Form 990, line 18, demonstrate its excess (or deficit) for 2002 and 2003 as:

- In 2002, the Form 990 stated revenue of \$244,345.00.
- In 2003, the Form 990 stated revenue of \$96,726.00.
- In 2004, the Form 990 stated revenue of \$12,944.00.

The petitioner's audited financial statements demonstrate its excess (or deficit) for 2004 through 2008 as:

- In 2004, the audited financials stated revenue of \$96,726.00.³
- In 2005, the audited financials stated revenue of \$12,944.00.⁴
- In 2006, the audited financials stated revenue of \$787,085.00.
- In 2007, the audited financials stated revenue of \$3,255,332.00.
- In 2008, the audited financials stated revenue of \$2,807,098.00.

Therefore, for the year 2005, the petitioner did not have sufficient net revenue to pay the proffered wage.

³ Due to the petitioner's fiscal year the financial numbers from the tax returns and the audited financials over-lap.

⁴ Due to the petitioner's fiscal year the financial numbers from the tax returns and the audited financials over-lap.

As an alternative means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. It is noted that the Form 990 does not permit a filer to identify its net current assets. In order to establish its net current assets in this case, the petitioner would need to submit audited balance sheets. The petitioner submitted audited financial statements demonstrate for 2004 through 2008 which reflect the petitioner's net current assets to be:

- In 2004, the audited financials stated net current assets of -\$982,303.00.
- In 2005, the audited financials stated net current assets of -\$928,467.00.
- In 2006, the audited financials stated net current assets of -\$316,901.00.
- In 2007, the audited financials stated net current assets of \$1,299,122.00.
- In 2008, the audited financials stated net current assets of \$2,165,393.00.

Accordingly, for the years 2004 through 2006 the petitioner did not establish that it had sufficient net current assets to pay the proffered wage. The petitioner failed to submit audited balance sheets to establish its net current assets in 2002 and 2003.

Furthermore, the petitioner has filed at least three additional immigrant petitions and three nonimmigrant petitions during the period in question. Therefore, the petitioner must establish that it had sufficient funds to pay all the wages from the priority date and continuing through the date of termination of employment or the date on which the beneficiary became a lawful permanent resident. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 9089 and Form ETA 9089). *See also* 8 C.F.R. § 204.5(g)(2).

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary of the instant petition or the other sponsored workers the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets.

USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the

petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

On appeal, counsel contends that the petitioner employs more than 100 full-time employees and submits a letter from the petitioner's Director of Finance to confirm the number of employees and the petitioner's ability to pay the proffered wage. In general, 8 C.F.R. § 204.5(g)(2) requires annual reports, federal tax returns, or audited financial statements as evidence of a petitioner's ability to pay the proffered wage. That provides further provides: "In a case where the prospective United States employer employs 100 or more workers, the director *may* accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage." (Emphasis added.)

The letter, dated March 29, 2010, from the petitioner's Director of Finance states that the petitioner employs more than 100 workers and has the ability to pay the beneficiary the proffered wage.⁵ Quarterly Statement of Deposits and Filings, Forms 941, indicate that the petitioner paid more than \$1,000,000.00 in payroll per quarter. The record also contains a letter, dated August 9, 2006, from the petitioner's Director of Finance, which states that the petitioner currently has 462 employees with a gross annual income of \$34,219,178.00, total compensation to staff of \$22,015,252.00 annually and that it has the ability to pay the beneficiary the proffered wage.

In the instant case, the petitioner's incorporation documents indicate it was established on May 12, 1971. The petitioner has provided its tax returns for 2000 through 2003, and audited financial statements for 2004 through 2008 with the 2001 tax return and 2005 financial statement not establishing the petitioner's ability to pay the proffered wage. Despite the petitioner's failure to provide information on the additional immigrant petitions and nonimmigrant petitions during the period in question, the AAO finds that the financial documents of the petitioner establish that it had sufficient funds to pay the proffered wage and the wages of the additional beneficiaries in 2006 through 2008. The petitioner's gross receipts were in the tens of millions of dollars during the period in question. Further, the petitioner paid salaries totaling more than \$1,000,000.00 in each

⁵ The letter is on Community Health of South Florida, Inc. letterhead, to which the petitioner amended its name in 2007.

quarter of 2009. The petitioner has also provided evidence that it has employed more than 100 workers in the pertinent years. Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has established that it had the continuing ability to pay the proffered wage from the priority date of December 14, 2002.

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 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 labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also 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 or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION

Grade School: None Required.

High School: 4 years

College: 4 years

College Degree Required: None specified.

Major Field of Study: medicine

TRAINING: None Required.

EXPERIENCE: None Required.

OTHER SPECIAL REQUIREMENTS: High School diploma or GED. Graduate from an approved medical assistant program in the State of Florida. 1-2 years experience in a medical setting desired. Certificate from an approved medical assistant or nursing assistant program. Bi-lingual skills a plus.

Must be computer literate. CPR certification desired.

The labor certification also states that the beneficiary qualifies for the offered position based on a High School diploma from Behesti, Teheran, Iran in June 1982; a medical degree from the University of Vienna, Vienna, Austria in April 1994; an MD from the General Hospital of Vienna, Vienna, Austria in September 1999; and Medical Assistant Certification from the American Registry of Medical Assistants in December 2001. No other education or experience is listed. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

The regulation at 8 C.F.R. § 204.5(i)(3)(ii)(A) states:

Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's certification of academic degree from the University of Vienna. It indicates that the beneficiary was awarded a doctor of general medicine on April 20, 1994. The record does not contain a credentials evaluation; however, 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 <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php>. 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.⁶ 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.⁷

⁶ See *An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

⁷ 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

EDGE's credential advice provides that a doctor of medicine results after six years of university study in medicine and is comparable to "a first professional degree in medicine in the United States."

The record contains a certificate for training as a general practitioner from the pulmonology center of the city of Vienna on its letterhead, signed by the directors of the hospital and of the department, stating that the beneficiary underwent training as a physician in: lung disease from April 1, 1997 through September 30, 1997. The record contains certificates of training as a general practitioner from the Neuenkirchen Hospital on its letterhead stating that the beneficiary underwent training as a physician in: otorhinolaryngology from January 7, 1996 through August 31, 1996; internal medicine from January 2, 1996 through March 31, 1996 and April 1, 1996 through June 30, 1996; surgery from September 1, 1996 through November 30, 1996 and December 1, 1996 through February 28, 1997. The record contains certificates of training as a general practitioner from the Wilhelminen Hospital on its letterhead, signed by the training physician and the director of the physician's training center, stating that the beneficiary underwent training as a physician in: internal medicine for cardiology and nephrology from October 1, 1997 through May 31, 1998; trauma from June 1998 through August 21, 1998; obstetrics and gynecology from September 1, 1998 through December 31, 1998; dermatology from January 1, 1999 through February 28, 1999; neurology from March 1, 1999 through April 30, 1999; and the children and youth health system with children's infectious diseases from May 1, 1999 through August 31, 1999.

The record contains a certificate of attendance indicating that the beneficiary attended CPR IHCP at Community Health of South Dade, Inc. on December 10, 2004.

The record contains a certificate from the American Registry of Medical Assistants (ARMA), dated December 19, 2001, indicating that the beneficiary is a qualified registered medical assistant. The record also contains a letter, dated November 17, 2009, from ARMA, stating that the beneficiary became a registered medical assistant on December 19, 2001. On appeal counsel contends that the beneficiary need not be a registered medical assistant since Florida statutes do not require a medical assistant to be registered in order to practice in the State of Florida and that the beneficiary is certified by ARMA as of December 19, 2001.

The AAO acknowledges that the documentation establishes that the beneficiary became a registered medical assistant before the priority date; however, the labor certification specifically requires graduation from an approved medical assistant program in the State of Florida and a certificate from

"baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

an approved medical assistant or nursing assistant program. The petitioner has failed to provide any evidence to establish that the beneficiary attended or graduated from such a program.⁸

The AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

⁸ While graduation from a medical assistant program is a factor in determining whether to admit an individual as a member of ARMA, it is not required. An applicant must be the graduate of an approved, accredited High School or its equivalent. As stated on the ARMA website, <http://arma-cert.org/requirements/> (accessed October 31, 2012), in a case such as the beneficiary's in which the applicant is a foreign physician, the applicant may submit a copy of the diploma or certificate of completion from an accredited medical institute.