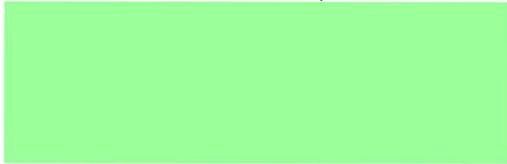


(b)(6)

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



DATE: **JUL 18 2012** 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.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn, and the matter will be remanded to the director for further consideration and a new decision.

The petitioner is a convenience store. It seeks to employ the beneficiary permanently in the United States as a store manager. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is December 29, 2004. *See* 8 C.F.R. § 204.5(d).²

The director's decision denying the petition concludes that the beneficiary did not possess the required education for the offered position and the requested preference classification.

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.

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.³

¹ Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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 grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

² This petition involves the substitution of a beneficiary on the labor certification. The substitution of beneficiaries was formerly permitted by the DOL. On May 17, 2007, the DOL issued a final rule prohibiting the substitution of beneficiaries on labor certifications effective July 16, 2007. *See* 72 Fed. Reg. 27904 (to be codified at 20 C.F.R. § 656). As the filing of the instant petition predates the final rule, and since the original beneficiary has not been issued lawful permanent residence based on the instant labor certification, the director permitted the requested substitution.

³ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Part A, Item 14 of the Form ETA 750 states that the offered position requires four years of college culminating in a bachelor's degree in business administration. On the labor certification, the beneficiary claims to qualify for the offered position based on a bachelor's degree in business administration from the University of [REDACTED] Pakistan, followed by a master's degree in business administration from the University of [REDACTED]. The record contains a copy of the beneficiary's bachelor's and master's degree diplomas and her master's degree examination transcripts.⁴

The University of [REDACTED] is a recognized university by the country's Higher Education Commission. See <http://beta.hec.gov.pk/OurInstitutes/Pages/Default.aspx> (last accessed July 16, 2012).

The AAO reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁵ According to EDGE, a two-year bachelor's degree from Pakistan is comparable to "[two] years of university study in the United States," and a two-year master's degree from Pakistan "represents attainment of a level of education comparable to a bachelor's degree in the United States."

Therefore, the beneficiary's master's degree from Pakistan is, by itself, equivalent to a U.S. bachelor's degree. The instant case does not involve a combination of two lesser degrees. The Pakistani two-year master's degree is sequential to and builds upon the Pakistani two-year bachelor's degree. This is analogous to the situation in the United States where a student obtains a two-year associate's degree followed by a bachelor's degree awarded after two years of additional study at an accredited college or university. The final degree is still a full four-year U.S. bachelor's degree. Conversely, if the beneficiary had possessed multiple two-year Pakistani bachelor's degrees in the instant case and the petitioner claimed they were equivalent to a U.S. bachelor's degree, the resulting equivalency would have been a combination of multiple lesser degrees, none of which would have been the single foreign equivalent of a U.S. bachelor's degree.

⁴ As is noted below, the beneficiary's name is not legible on the two diplomas.

⁵ 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 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.

The beneficiary possesses four years of college culminating in a single degree that is the foreign equivalent of a U.S. bachelor's degree in business administration. Therefore, it is concluded that the beneficiary possess the required education for the offered position as set forth on the labor certification and for the requested preference classification. In view of the foregoing, the decision of the director will be withdrawn.

However, the petition cannot be approved because the petitioner has not established its ability to pay the proffered wage. The petitioner must demonstrate its continuing ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay "shall be in the form of copies of annual reports, federal tax returns, or audited financial statements." *Id.* The priority date of the instant petition is December 29, 2004. The record contains the petitioner's federal tax returns for 2005 and 2006. The record does not contain an annual report, federal tax return, or audited financial statement for 2004. In addition, the beneficiary has not yet obtained lawful permanent residence. Therefore, the director should also request copies of annual reports, federal tax returns, or audited financial statements for the petitioner from 2007 until the present.

The director should also request copies of the beneficiary's bachelor's and master's degree diplomas with her name clearly legible.

The director may request any additional evidence considered pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn; however, the petition is currently not approvable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new, detailed decision which, if adverse to the petitioner, is to be certified to the AAO for review.