

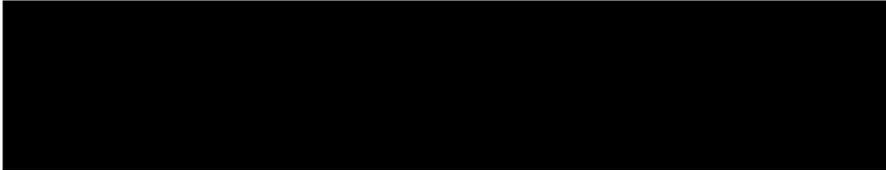
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



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



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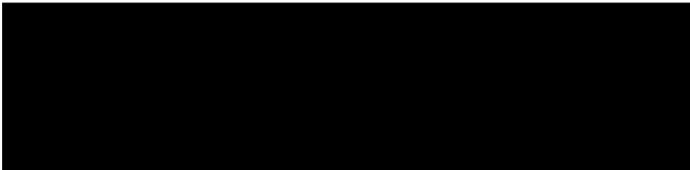
DATE: JUL 17 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 

Beneficiary: 

PETITION: Immigrant petition for Alien Worker as a Skilled Worker 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 preference visa petitions were denied in separate decisions issued by the Director, Nebraska Service Center (Director). A joint appeal was filed, which is now before the Chief, Administrative Appeals Office (AAO). The Director's decisions will be withdrawn and the cases remanded for new decisions.

The initial petition – Form I-140, Immigrant Petition for Alien Worker – was filed by [REDACTED] an IT consulting company, on December 20, 2007 [REDACTED]. It sought to employ the beneficiary permanently in the United States as a programmer and to classify him as either a skilled worker or a professional pursuant to section 203(b)(3)(A)(i) or (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A)(i) or (ii).¹ The petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, that was filed by Eagles with the Department of Labor (DOL) on November 17, 2004, and certified by the DOL on October 16, 2006. On April 11, 2011, Performance Group, claiming to be the successor-in-interest to Eagles, filed an amended Form I-140 [REDACTED] accompanied by the same labor certification. The amended petition seeks to employ the beneficiary permanently in the United States as a computer programmer and to classify him as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act.

On September 29, 2011, both petitions were denied by the Director. While finding that the evidence of record established (a) that the beneficiary had the requisite experience, as specified on the labor certification, to qualify for the proffered position, and (b) that either [REDACTED] had the continuing ability to pay the proffered wage from the priority date (November 17, 2004) through the end of 2010 [REDACTED] in the years 2004-2008 and [REDACTED] the Director denied the petitions on the ground that the record failed to establish that [REDACTED] is the successor-in-interest to [REDACTED]. The Director found that [REDACTED] was dissolved in 2008, prior to the merger agreement dated January 1, 2009, and that there was no evidence that [REDACTED] purchased the assets, essential rights and obligations of [REDACTED].

On October 31, 2011, a joint appeal was filed on both decisions. The record shows that the appeal is properly filed and timely. The petitioner submitted a brief from counsel and supporting documentation with the appeal, and has supplemented those materials with additional documentation in response to a Request for Evidence (RFE) issued by the AAO on May 15, 2012. The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Based on the entire record in this proceeding – including additional evidence of the business relationship among Eagles, Performance Group, and their common client, American Family Mutual

¹ Section 203(b)(3)(A)(i) of the Act provides for the granting of 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)(2)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

(for the beneficiary's services) to [REDACTED] as of January 1, 2009 (the merger date of the latter two companies), and records from the Missouri Secretary of State confirming that [REDACTED] was administratively dissolved in October 2009 (not in 2008, as found by the Director in his decision) – the AAO determines that [REDACTED] has established, by a preponderance of the evidence, that it was the successor-in-interest to Eagles on January 1, 2009.² See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Commr. 1986).

Thus, the petitioner has overcome the grounds for denial in the Director's decisions of September 29, 2011. Those decisions will therefore be withdrawn.

Based on the current record, however, the AAO cannot sustain the appeal. To be eligible for an employment-based immigrant visa the beneficiary must have all the education, training, and experience specified on the labor certification as of the application's priority date, which is the date it was accepted for processing by the DOL. See *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). As previously mentioned, the priority date in this case is November 17, 2004.³

The minimum education, training, and experience required for the job in this case – programmer – is set forth on the Form ETA 750 in Part A, Block 14 – as follows:

EDUCATION (number of years):

Grade school – 8 years
High school – 4 years
College – 4* years
College Degree Required – Bachelor's
Major Field of Study – Computer Science or Equivalent**

TRAINING

None

² In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. See *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988).

³ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

EXPERIENCE:

5* years in the Job Offered

In a prior decision issued by the AAO on October 27, 2010 – dismissing the appeal of an earlier Form I-140 petition filed by ██████████ seeking classification of the beneficiary as an advanced degree professional under section 203(b)(2) of the Act – the AAO found that the education and experience requirements of the labor certification (the same Form ETA 750 that underlies the instant petition) were unclear on their face, and proceeded to interpret them in the following manner:

[T]he terms of the labor certification are sufficiently ambiguous to merit a review of the petitioner's claimed intent, as that intent was expressed to the DOL during the labor certification process. The recruitment report, the advertisements for the offered position and the Notice all state that the offered position requires a bachelor's degree or equivalent education or experience. The labor certification can be interpreted in a manner that is consistent with these documents, therefore it is concluded that the evidence submitted by counsel on appeal is sufficient to establish that the petitioner intended for the minimum requirements of the position to include a combination of education each individually less than a bachelor's degree.

Thus, while the labor certification requires a bachelor's degree, it allows for that requirement to be fulfilled by a combination of lesser degrees, or a combination of lesser degrees and experience, that in sum are equivalent to a U.S. bachelor's degree.

The documentation of record shows that the beneficiary earned the following educational credentials in Canada:

- A Diploma in Data Processing (*Diplome d'etudes collegiales*) from Dawson College in Montreal, awarded on June 28, 1983. The beneficiary's transcript shows that the coursework was completed over the period of four academic years from 1979 to 1983.
- A Certificate in Computer Based Information Systems and Management Information Systems from McGill University's Centre for Continuing Education in Montreal, awarded on June 16, 1992. The beneficiary's transcript shows that he completed this program as a part-time student over the period of four and a half academic years from 1988 to 1992.

As evidence of the U.S. equivalency of this education the petitioner has submitted an evaluation by ██████████ in Hypoluxo, Florida, dated January 22, 2007. ██████████ concluded that the two educational credentials earned by the beneficiary, in combination, are equivalent to a Bachelor of Science in Computer Information Systems from an accredited U.S. college or university. The evaluation is based exclusively on the

beneficiary's education, and did not take into consideration the beneficiary's experience in the computer field, which exceeded five years as of the priority date.

As noted by the AAO in its decision of October 27, 2010, U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, utilize statements submitted as expert testimony as advisory opinions. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of expert opinions in support of a petition is not presumptive evidence of eligibility. *Id.* at 795. USCIS may give less weight to an opinion that is not corroborated, not in accord with other information, or questionable in any way. *Id.* *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 (Regl. Commr. 1972)).

The AAO noted in its decision of October 27, 2010, that the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), is another resource for information about the U.S. equivalency of foreign educational credentials. As stated on 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." <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.⁴ 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.⁵

⁴ *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

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.

According to EDGE, a *Diplome d'etudes collegiales* (Diploma of College Studies) is awarded upon completion of a three-year vocational program, and is comparable to one year of study at a U.S. college or university. EDGE has no information about the beneficiary's other credential – the Certificate in Computer Based Information Systems and Management Information Systems from the Centre for Continuing Education at McGill University. Its name would appear to indicate that the credential is not a full-fledged degree or diploma. Moreover, the beneficiary completed the entire certificate program as a part-time student. [REDACTED] did not take either of these factors into consideration in his evaluation. Based on the foregoing considerations, [REDACTED] conclusion that the beneficiary's two credentials are equivalent to a U.S. bachelor's degree is not persuasive.

Since the Director made no finding in these proceedings as to the U.S. equivalency of the beneficiary's education, the petitions will be remanded for consideration of this issue. The Director may request any additional evidence that may be pertinent. Similarly, the petitioner may provide additional evidence within a reasonable period of time, as set by the Director. Upon receipt of all the evidence, the Director will enter a new decision on each petition.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The Director's decisions of September 29, 2011 are withdrawn. For the reasons discussed above, however, the petitions are not approvable on the current record. Accordingly, the petitions are remanded to the Director for review. The Director shall issue a new decision on each petition that incorporates a finding as to the U.S. equivalency of the beneficiary's education.