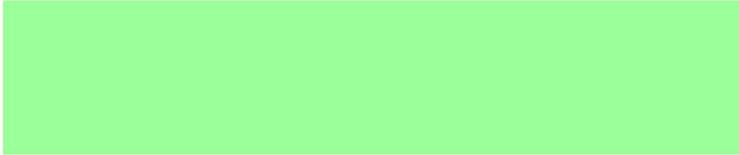


(b)(6)

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

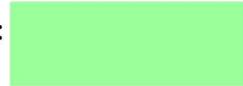


U.S. Citizenship  
and Immigration  
Services



DATE: NOV 06 2012 OFFICE: TEXAS SERVICE CENTER

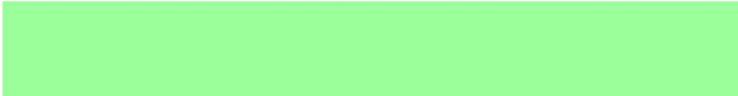
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IN RE:

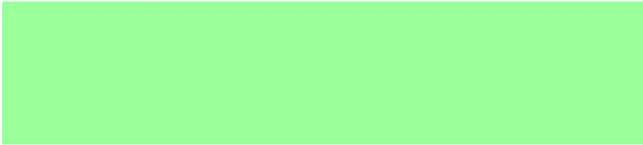
Petitioner:

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 for*

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was denied by the Director, Texas Service Center. The matter was appealed to the Administrative Appeals Office (AAO). The matter will be remanded to the Texas Service Center.

The petitioner is a teacher staffing agency. It seeks to employ the beneficiary permanently in the United States as a math teacher. 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). As set forth in the director's July 18, 2009 denial decision, it was determined that the beneficiary did not meet all of the requirements set forth on the labor certification.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), provides that "the term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

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.<sup>1</sup>

The Director, Texas Service Center found that the record does not establish that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree.

Regarding the minimum level of education for the proffered position in this matter, Part H of the labor certification reflects the following requirements:

- H.4. Education: Minimum level required: Bachelor's
- 4-B. Major Field of Study: Math/Educ. or Educ./Science or related field
- 9. Is a foreign educational equivalent acceptable?

The petitioner listed "yes" that a foreign educational equivalent would be accepted.

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<sup>1</sup> 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).

The record contains the following diplomas earned by the beneficiary from [REDACTED] in Hyderabad, India:

- 1983 Bachelor of Science - 1) Mathematics 2) Physics 3) Chemistry
- 1986 Bachelor of Education specializing in Physical Science and Mathematics
- 1992 Master of Education
- 1992 Master of Science

The record contains an evaluation of the beneficiary's credentials prepared by an unnamed evaluator from the [REDACTED]. The evaluation states that the beneficiary's credentials are equivalent to a "Bachelor's degree in science education and master's degree in mathematics and education from a regionally accredited institution." In the director's decision, he notes that the submitted evaluation does not provide a statement regarding the evaluator's qualifications. On appeal, counsel submits information regarding the nature of [REDACTED] evaluations and appears to indicate that [REDACTED] was the individual who prepared the evaluation.

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.<sup>2</sup> 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.<sup>3</sup>

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<sup>2</sup> 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](http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx).

<sup>3</sup> 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

According to EDGE, a Bachelor of Science degree from India is comparable to “two to three years of university study in the United States.” EDGE also indicates that the “Bachelor of Education, following a three-year bachelor’s degree, represents attainment of a level of education comparable to a bachelor’s degree in the United States.”

The submitted credentials indicate that the beneficiary’s bachelor of science degree was a three year program, followed by the attainment of a bachelor of education degree. As EDGE indicates that the beneficiary’s bachelor of education represents the U.S. equivalent to a bachelor’s degree, this credential, predicated on completion of the three-year bachelor of science degree, represents a single degree which satisfies the requirements of the ETA Form 9089 and the regulation under section 8 C.F.R. § 204.5(l)(3)(ii)(C). Additionally, the beneficiary earned two Indian masters degrees: a master of science and a master of education. According to EDGE, these degrees are comparable to master’s degrees in the United States. Given all of the above, the record establishes that the beneficiary has met the educational requirements set forth on the labor certification. Thus, this ground for denial is withdrawn.

Upon review of the record, the AAO has determined that the record does not contain evidence of the petitioner’s ability to pay<sup>4</sup> the proffered wage of \$37,360 per year continuously from May 28, 2008.<sup>5</sup> Additionally, the record does not establish the petitioner’s ability to pay all of the beneficiaries of its pending immigrant and non-immigrant petitions.<sup>6</sup> Therefore, the AAO will remand the case to the director to determine whether the petitioner has the ability to pay the proffered wage.

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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.

<sup>4</sup> 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.

<sup>5</sup> The record contains a Form W-2 for 2009 issued by the petitioner to the beneficiary that indicates he was paid in excess of the proffered wage in that year. This Form W-2 was submitted with a second Form I-140 filed by the petitioner on behalf of the beneficiary on November 12, 2010.

<sup>6</sup> 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’l Comm’r 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job

Finally, part H.14. of ETA Form 9089 requires that the petitioner submit evidence to establish that as of the May 28, 2008 priority date, the beneficiary had a Georgia teaching certificate or alternatively, that he was eligible for certification. The record contains a photocopy of the beneficiary's Georgia Educator Certificate that was submitted in November 2010 with the second Form I-140. The certificate was printed on June 16, 2008 and the validity period is from July 1, 2008 through June 30, 2013. Thus, it is not evident that the beneficiary was certified or eligible for certification as of the priority date.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issues stated above. 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.

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offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). Further, the petitioner would be obligated to pay each H-1B petition beneficiary the prevailing wage in accordance with DOL regulations, and the labor condition application certified with each H-1B petition. *See* 20 C.F.R. § 655.715.

In determining whether the petitioner has established its ability to pay the proffered wage to multiple beneficiaries, USCIS will add together the proffered wages for each beneficiary for each year starting from the priority date of the instant petition, and analyze the petitioner's ability to pay the combined wages. However, the wages offered to the other beneficiaries are not considered for the period prior to the priority dates of their respective Form I-140 petitions, after the dates the beneficiaries obtained lawful permanent residence, or after the dates their Form I-140 petitions have been withdrawn, revoked, or denied without a pending appeal. In addition, USCIS will not consider the petitioner's ability to pay additional beneficiaries for each year that the beneficiary of the instant petition was paid the full proffered wage.