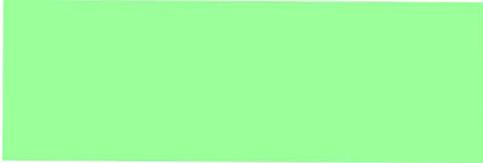


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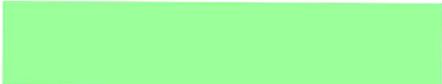
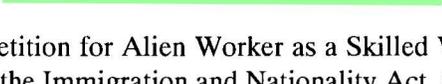
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



DATE: **APR 25 2013** OFFICE: NEBRASKA 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 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center 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 software development and consulting business. It seeks to permanently employ the beneficiary in the United States as a computer programmer. 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). The petition is accompanied by a labor certification approved by the U.S. Department of Labor.

The director's decision denying the petition concludes that the beneficiary does not have a U.S. bachelor's degree or the foreign equivalent thereof as required by the terms of the labor certification.

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.¹

On February 21, 2013, the AAO sent the petitioner a request for evidence (RFE) with a copy to counsel. The RFE requested that the petitioner provide evidence establishing the beneficiary's educational qualifications, the recruitment report and related DOL correspondence, evidence on the ability to pay the proffered wages of other beneficiaries, evidence of good standing and proof that the petitioner will be the beneficiary's actual employer. The RFE informed the petitioner that failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

The AAO received a response to the from a senior human resources manager at [REDACTED] dated March 18, 2013, which states that the original petitioner no longer employs the beneficiary, and, "therefore, a response to the request for evidence is no longer necessary." The manager did not provide any of the evidence requested in in the RFE. To date, the petitioner has not submitted a response. The AAO notes that the [REDACTED] address listed on the manager's letter is the same address as the petitioner's.

The petitioner failed to submit requested evidence that precludes a material line of inquiry, therefore, the petition will be denied pursuant to 8 C.F.R. § 103.2(b)(14).

¹ 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).

In addition, the evidence in the record is insufficient to establish that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). 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 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 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 the instant case, the labor certification states that the offered position requires 4 years of college education, a Bachelor's in a "Quantitative Discipline"² major field of study, and 2 years of experience in the job offered or 2 years of experience in the related occupation of application developer. Additionally, the attached addendum also states that:

Acceptable degrees are included, but not limited to the above. The employer is reluctant to make a definitive list out of concern that a prospective applicant lacking one of the specific named degrees might be discouraged. Moreover, for positions in which the Master's degree is the stated minimum education, the employer recognizes a Bachelor's Degree combined with five years progressive experience in the field to be equivalent of a Master's Degree.

On the labor certification, the beneficiary claims to qualify for the offered position based on a Bachelor of Arts in Psychology from the [REDACTED] completed in 1994 as well as additional qualifications and skills including a two year "advanced diploma" in Systems Management from [REDACTED] completed in November 1995 and Microsoft certification in Visual Basic.

The record contains a copy of the beneficiary's Bachelor of Arts diploma and transcripts from the [REDACTED]. The record also contains a copy of the beneficiary's "Advanced Diploma" in systems management and transcripts from the [REDACTED].

The record also contains an evaluation of the beneficiary's credentials prepared by [REDACTED].

² The addendum states "Degree in a quantitative discipline: This requirement is meant to define the minimum education requirement for the position offered. A degree is the normally accepted method of entry into this profession according to the Department of Labors [sic] own Occupational Outlook Handbook and SVP. The employer recognizes that the degrees [sic] actual name is not significant as long as it has significant core of necessary related courses." The addendum provided a list of more than 20 alternate fields of study that the petitioner indicated were acceptable. Psychology was not among them.

on March 10, 2009. The evaluation concludes that the combination of her bachelor's degree and her "Advanced Diploma" in Systems Management from [REDACTED] are equivalent to Bachelor's degree in psychology with specialization in computer science. The evaluation also separately concludes that the beneficiary's three year Bachelor of Arts from [REDACTED] is equivalent to a four year bachelor's degree in the United States.

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, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *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)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

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 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 http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

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

According to EDGE, a three year Bachelor of Arts degree from India is comparable to “three years of university study in the United States,” but does not conclude that it would be the foreign equivalent of a four-year U.S. bachelor’s degree.

EDGE also discusses postsecondary diplomas, for which the entrance requirement is completion of secondary education. EDGE provides that a postsecondary diploma is comparable to one year of university study in the United States, but does not suggest that, if combined with a three-year degree, it may be deemed the foreign equivalent of a U.S. bachelor’s degree. However, nothing in the record shows that [REDACTED]’s AICTE approved or a valid, accredited program to have any academic equivalency.

In the instant case, the record does not contain any evidence establishing that the beneficiary’s diploma was issued by an accredited university or institution approved by AICTE, or that a two- or three-year bachelor’s degree was required for admission into the program of study. The record of proceeding does not contain any information on [REDACTED] prerequisite for its diploma program. In response to the RFE, petitioner did not submit evidence to show what the entrance requirements were for the beneficiary’s entry into the [REDACTED] program, or that it was a valid, AICTE approved program at the time the beneficiary attended. Without such evidence, nothing in the record demonstrates the quality of the education. Thus, the AAO cannot determine whether this diploma is equivalent to any amount of university study.

Based on the conclusions of EDGE, the evidence in the record is not sufficient to establish that the beneficiary possesses the foreign equivalent of a four-year U.S. bachelor’s degree in a quantitative discipline as required by the terms of the labor certification. The terms of the labor certification do not state any equivalency to a Bachelor’s degree in a quantitative field, and based on the above, the petitioner has not established that the beneficiary has either the foreign equivalent or the equivalent of a four-year U.S. Bachelor’s degree in a quantitative discipline. The AAO informed the petitioner of EDGE’s conclusions in the RFE, however, the petitioner did not provide any evidence to overcome these conclusions.

The evidence in the record does not establish that the beneficiary possessed the required education set forth on the labor certification by the priority date. Therefore, the petitioner has failed to establish that the beneficiary is qualified for the offered position.

Beyond the decision of the director, the petitioner has also failed to establish 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

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.

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 record before the director closed on March 11, 2009 with the receipt by the director of the petitioner’s submissions in response to the director’s request for evidence. As of that date, the petitioner had not submitted any federal income tax returns. The record does contain annual reports for 2004 and 2005 but does not contain federal tax returns, or audited financial statements for the petitioner for 2004 – 2012.

The petitioner’s failure to provide complete annual reports, federal tax returns, or audited financial statements for each year from the priority date is sufficient cause to dismiss this appeal. While additional evidence may be submitted to establish the petitioner’s ability to pay the proffered wage, it may not be substituted for evidence required by regulation.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

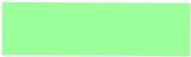
According to USCIS records, the petitioner has filed over 500 employment-based petitions on behalf of other beneficiaries. Accordingly, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg’l Comm’r 1977).

The evidence in the record does not document the priority date, proffered wage or wages paid to each beneficiary, whether any of the other petitions have been withdrawn, revoked, or denied, or whether any of the other beneficiaries have obtained lawful permanent residence. Thus, it is also concluded that the petitioner has not established its continuing ability to pay the proffered wage to the beneficiary and the proffered wages to the beneficiaries of its other petitions.

Therefore, beyond the decision of the director, the petitioner has also failed to establish its continuing ability to pay the proffered wage as of the priority date. *See* 8 C.F.R. § 204.5(g)(2).

Beyond the decision of the director, the appellant also failed to establish that it is a successor-in-interest to the entity that filed the petition and labor certification. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the appellant is a different entity than the petitioner/labor certification employer, it must establish that it is a successor-in-interest to that entity. *See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

The AAO notified the petitioner that it had not established if there was a successor-in-interest to the petitioner or labor certification entity. The petitioner did not submit evidence to establish that the



successor merged entity operates under the same federal tax identification number as the original petitioner, or that [REDACTED] is the successor to the initial petitioner and that the successor entity has the ability to pay the proffered wage from the date of the merger onward. Accordingly, the petition must also be denied because the petitioner has failed to establish whether there is a successor-in-interest to the entity that filed the petition and labor certification.

Accordingly, the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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. The petitioner has not met that burden.

ORDER: The appeal is dismissed.