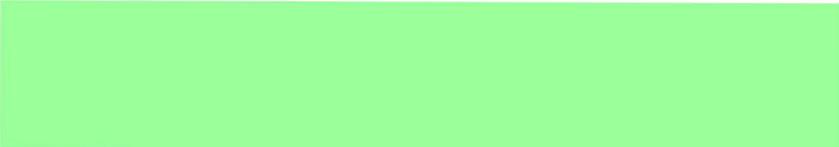


U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **APR 26 2013** OFFICE: TEXAS SERVICE CENTER



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:



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,

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on a motion to reopen. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will remain denied.

The petitioner describes itself as a carrier service. It seeks to permanently employ the beneficiary in the United States as a senior systems analyst. 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 director's decision denying the petition concludes that the beneficiary did not possess a U.S. bachelor's degree or foreign equivalent as required by the terms of the labor certification.

On August 14, 2012, the AAO dismissed the subsequent appeal, holding that the petitioner failed to establish that the beneficiary possessed the education required by the terms of the labor certification. The petitioner then filed a motion to reopen the AAO decision. A motion to reopen must provide new facts and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, we will accept the motion to reopen the matter based on the new credential evaluation submitted by the petitioner to verify the beneficiary's education.<sup>1</sup> Thus, the instant motion is granted. 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.

Counsel on motion specifically states that the beneficiary does not qualify under the professional category and states that he qualifies only under the skilled worker provision.<sup>2</sup> 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(l)(3)(ii)(B) states:

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<sup>1</sup> The petitioner submitted 16 additional exhibits duplicating evidence previous submissions.

<sup>2</sup> On motion, counsel asserts that the Electronic Database for Global Education (EDGE) holds that passage of the final examination of the [REDACTED] is equivalent to a U.S. bachelor's degree in accounting. Counsel notes that the beneficiary would not qualify under the terms of the labor certification based on such a degree, but offers the degree as corroboration of bachelor level studies. We note that passage of the final examination of [REDACTED] does not amount to bachelor level education in the United States, but instead, associate membership in [REDACTED] is equivalent to a U.S. bachelor's degree in accounting. Passage of the final examination is only one requirement of [REDACTED] associate membership.

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

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

**EDUCATION**

Grade School: [blank]  
High School: [blank]  
College: 4 years  
College Degree Required: BS or equivalent experience  
Major Field of Study: Computer Science

**TRAINING:** None Required.

**EXPERIENCE:** Three (3) years in the job offered or in the related occupation of Systems Analyst

**OTHER SPECIAL REQUIREMENTS:** thorough understanding of basic financial practices and functional and technical experience using the following Oracle Applications: A/R, A/P, PO, G/L, F/A, and INV; 2-3 yrs. Exp. w/Oracle Applications v 11.0.3 or higher; implementation in one of the following Oracle Application Modules: A/R or G/L; 2-3 yrs experience in leading an Oracle implementation; Oracle multi-org experience; 2-3 years of experience in the following (sql, PL/SQL, Oracle Forms 4.5 or higher, Oracle Reports 2.5 or higher, SQL\*LOADER and Oracle 7 or higher); 2-3 yrs. Exp. In a UNIX environment.

As stated in the previous AAO decision, the petitioner failed to establish that the beneficiary met the minimum educational requirements as of the priority date.<sup>3</sup> With its motion, the petitioner submits a credentials evaluation dated September 10, 2012 from [redacted] examined the beneficiary's Bachelor of Commerce from [redacted] and the [redacted] in concluding that the beneficiary holds the equivalent of a U.S. Bachelor of Arts degree in Accounting. [redacted] relied upon the number of years required to achieve a Bachelor of Commerce and Final Examination Certificate in reaching his conclusion. [redacted] then recited the beneficiary's years of experience and concluded that, based on a three-years of work experience to

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<sup>3</sup> The petitioner previously submitted evaluations from [redacted] for [redacted] International on July 14, 2007, [redacted] on July 14, 2007, and [redacted] as well as an evaluation from [redacted] of the [redacted] submitted with a previously filed petition. The petitioner also submitted a letter from [redacted] of the [redacted] All of these documents considered the beneficiary's education in considering whether he holds the equivalent of a U.S. bachelor's degree.

one year of college education ratio that the beneficiary received “university-level training in Computer Information Systems.” In summary, [REDACTED] states that the combination of the beneficiary’s education and experience is equivalent to “at least” (emphasis in original) a U.S. Bachelor of Science degree in Computer Information Systems.

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.* 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 evaluation submitted with the motion to reopen used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). [REDACTED] did not analyze the beneficiary’s experience as relates to courses required for a Bachelor of Science in Computer Science or otherwise demonstrate how the beneficiary’s particular experience would be the equivalent of such a degree.

The previous AAO decision discussed whether the petitioner established that the beneficiary had “equivalent [work] experience,” e.g. work experience equating to a Bachelor of Science in Computer Science degree. The decision specifically considered the recruitment materials submitted by the petitioner including job advertisements from its website, *Transport Topics*, and the *Dayton Daily News*, the petitioner’s recruitment report, and resumes submitted from three applicants. The decision noted that neither the labor certification nor any of the submitted recruitment documents explain how much or what type of experience would be equivalent to a U.S. bachelor’s degree in Computer Science. The petitioner failed to establish that under the terms of the labor certification, the petitioner intended the labor certification to require less than a four-year U.S. bachelor’s or foreign equivalent degree, as that intent was expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.

In addition, the petitioner failed to establish that the beneficiary’s particular experience is equivalent to a bachelor’s degree in Computer Science to qualify him under the terms of the labor certification. Therefore, the previous AAO decision holding that the terms of the labor certification require a four-year U.S. bachelor’s degree in Computer Science or experience equivalent to such a degree and that the beneficiary does not possess such a degree nor does the evidence of record establish any sort of defined equivalency for a bachelor’s degree or that the beneficiary met that equivalency is affirmed. The petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date. Therefore, the

(b)(6)

Page 5

beneficiary does not qualify for classification as a skilled worker under section 203(b)(3)(A)(i) 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 motion to reopen is granted and the decision of the AAO dated August 14, 2012 is affirmed. The petition remains denied.