

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



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 05 2019 OFFICE: NEBRASKA SERVICE CENTER

FILE: [REDACTED]

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:

SELF-REPRESENTED

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 with the field office or service center that originally decided your case by filing a 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, Nebraska Service Center (the director), denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a memory products research and manufacturing business. It seeks to employ the beneficiary permanently in the United States as a senior firmware engineer pursuant to section 203(b)(3)(A) (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), which grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. As required by statute, a Form ETA 9089, labor certification accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The director determined that the beneficiary's credentials could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in Electrical or Electronics Engineering, Communications Engineering, Mathematics, or Computer Science because a three-year Bachelor of Science degree from India is only comparable to "three years of university study in the United States."

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 AAO issued a request for evidence (RFE) on February 27, 2013 concerning the actual minimum educational requirements of the offered position. The AAO explained that it consulted the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),<sup>2</sup> which did not equate the beneficiary's credentials to a U.S. baccalaureate degree. The AAO advised the petitioner that the evidence in the record of proceeding did not support a determination that the petitioner intended the actual minimum requirements of the offered position to include alternatives to a bachelor degree such as the credentials held by the beneficiary. The AAO solicited additional evidence of the beneficiary's credentials and evidence of how the petitioner expressed its actual minimum educational requirements to the U.S. Department of Labor (DOL) during the labor certification process. The AAO also advised the petitioner that it had failed to establish that

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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 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).

<sup>2</sup> 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>.

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the beneficiary possessed the required 60 months of experience in the proffered position by the priority date or that it had the ability to pay the proffered wage from the priority date.

The AAO specifically advised the petitioner that it had 45 days to respond and failure to respond to the RFE would result in dismissal as the AAO could not substantively adjudicate the appeal without the information requested. As of the date of this decision, the AAO has not received a response to the RFE from the petitioner. The 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 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 appeal is dismissed.