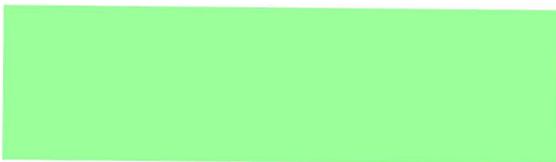


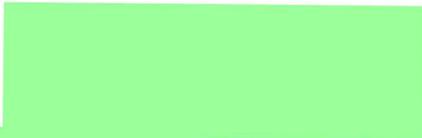


U.S. Citizenship
and Immigration
Services

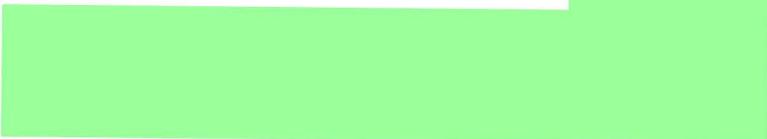
(b)(6)



DATE: JUN 25 2013 OFFICE: NEBRASKA SERVICE CENTER

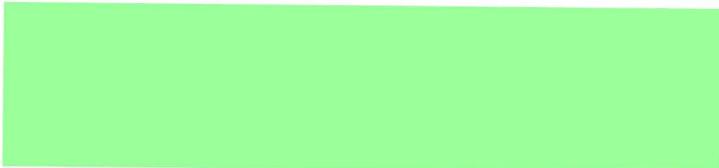


IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or a 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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petitioner filed an appeal, which was dismissed by the Chief, Administrative Appeals Office (AAO), on the ground that the petitioner failed to respond to the Notice of Intent to Deny and Request for Evidence (NOID/RFE) issued by the AAO. The proceeding was subsequently reopened by the AAO on its own motion because the petitioner did, in fact, submit a timely response to the NOID/RFE. After reviewing the petitioner's response to the NOID/RFE, the AAO will dismiss the appeal.

The petitioner is an image processing service. On January 24, 2008, it filed an Immigrant Petition for Alien Worker, Form I-140, seeking to permanently employ the beneficiary in the United States as an accountant and to classify her as a professional 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). This section of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. As required by statute, the petition was accompanied by an Application for Permanent Employment Certification, ETA Form 9089, which was filed with the U.S. Department of Labor (DOL) on November 14, 2007, and certified by the DOL on November 26, 2007.

Documentation submitted with the petition included copies of the petitioner's academic records showing that she was awarded a Bachelor of Science in Commerce (B.S.C.) from ██████████ Philippines, on March 30, 1999, upon completion of a four-year degree program. Also submitted with the petition was a credentials evaluation prepared by ██████████ on May 10, 2006. The evaluation concluded that the beneficiary's degree was issued by an accredited institution of higher education in the Philippines and that it was the foreign equivalent of a Bachelor of Business Administration in Management from a regionally accredited college in the United States.

In response to a Request for Evidence (RFE) from the Director questioning ██████████ accreditation status, the petitioner submitted documentation showing that (1) three degree programs at ██████████ including Bachelor of Elementary Education, Commerce, and Computer Science – were accorded "CS" (candidate status) in May 2008, and (2) the ██████████ "Business Administration Program" was endorsed by the Philippine Association of Colleges and Universities Commission on Accreditation (PACUCOA) for certification to the Federation of Accrediting Agencies of the Philippines (FAAP) "for Level 1 Formal Accredited Status" on June 16, 2008. It is unclear from the record whether the degree programs identified as Commerce and Business Administration are the same programs.

On May 19, 2009, the Director denied the petition. The decision concluded that the beneficiary did not have the requisite education for the offered position as set forth on the labor certification. Specifically, the Director concluded that, since ██████████ was not accredited when it issued the beneficiary's degree, the beneficiary's degree cannot be considered the foreign equivalent of a U.S. bachelor's degree.

The petitioner filed a timely appeal. 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.

On appeal, counsel claimed that the Director's decision was erroneous because [REDACTED] is a government-recognized institution which has been authorized to grant a Bachelor of Science in Commerce since 1968. As evidence thereof, counsel submitted a photocopied document from the Philippine Department of Education granting [REDACTED] "government recognition for the four-year collegiate commercial course leading to the degree of Bachelor of Science in Commerce (B.S.C.)," effective July 1, 1968. The Philippine Department of Education's power to award degree granting privileges was transferred by law to the Commission on Higher Education (CHED) in 1994. Counsel states that accreditation by PACUCOA or any other non-government accrediting agency is voluntary and is therefore not required for a tertiary educational institution in the Philippines to operate and grant degrees. Counsel concludes that the beneficiary's B.S.C. from ICC should be accepted as fully equivalent to a U.S. bachelor's degree regardless of [REDACTED] accreditation status in 1999. Counsel also submitted a new evaluation by [REDACTED] dated July 2, 2009. The evaluation states that the beneficiary's B.S.C. from [REDACTED] as equivalent to a Bachelor of Business Administration from an accredited college or university in the United States.

The AAO issued its NOID/RFE on July 25, 2012, pointing to deficiencies in the record regarding the accreditation status of [REDACTED] and the beneficiary's prior work experience. The AAO referred to information in the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO),¹ which indicated that a Bachelor of Commerce degree in the Philippines comprises four to five years of college level study. EDGE's overview of the country's educational system also states that, similar the United States, accreditation is voluntary in the Philippines.

A school's recognition by the government is not the same as accreditation. Accreditation imposes higher standards than the minimal standards required for government recognition. While [REDACTED] was a government recognized college at the time the beneficiary studied there and received her degree in

¹ 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." <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. 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.

the 1990s, it was not accredited at that time. Accordingly, the AAO's NOID/RFE advised the petitioner that the record failed to establish that the beneficiary's degree from [REDACTED] is equivalent to a U.S. bachelor's degree. The NOID/RFE also noted that the record did not establish that the beneficiary possessed the requisite 24 months experience for the accountant position as set forth on the labor certification. Specifically, the employment letters in the record of proceeding pertained to two part-time jobs that were not sufficient to establish two years of full-time employment. The NOID/RFE also instructed the petitioner to submit additional evidence of the petitioner's continuing ability to pay the \$52,083.20 proffered wage from the priority date.

Counsel's response to the NOID/RFE states that there is no requirement in the applicable regulations at 8 C.F.R. § 204.5(l)(2) and 8 C.F.R. § 204.5(l)(3)(ii)(C) that a degree must be granted by an accredited institution to qualify the recipient for professional classification. The regulatory language for employment-based immigrant petitions, counsel points out, differs from the regulations for H-1B nonimmigrant petitions, which specifically state that a foreign degree must be equivalent to a U.S. bachelor's degree from a regionally accredited college or university. Counsel cites the previously submitted evaluations of [REDACTED] and asserts that the beneficiary's four years of coursework at [REDACTED] should be considered equivalent to a U.S. bachelor's degree, in accord with the requirements of the labor certification.

With respect to the beneficiary's work experience, counsel cited an earlier job allegedly held by the beneficiary as a full-time accountant in the years 1999-2001. However, no documentary evidence thereof was submitted.²

As for the petitioner's ability to pay the proffered wage, additional evidence was submitted in the form of copies of the petitioner's federal income tax returns (Forms 1120S) for the years 2008-2010 and the Wage and Tax Statements (Forms W-2) issued by the petitioner to the beneficiary for the years 2008-2011. This documentation supplements previously submitted evidence for 2007 – the petitioner's Form 1120S and the beneficiary's Form W-2.

On September 26, 2012, the AAO erroneously dismissed the appeal on the ground that the petitioner failed to respond to the NOID/RFE, and thus failed to substantiate its eligibility for the benefits sought in the petition. On October 17, 2012, the petitioner filed a motion to reopen, along with copies of the materials filed with the AAO on August 27, 2012. On February 5, 2013, the AAO acknowledged its error and reopened the proceeding.

Based on all of the evidence in the record of proceeding, the AAO concludes that the petitioner has established by a preponderance of the evidence its continuing ability to pay the proffered wage from the priority date onward. The remaining issues on appeal, therefore, are:

² Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

- Whether the beneficiary's bachelor's degree from [REDACTED] makes her eligible for classification as a professional and satisfies the educational requirements of the offered position as set forth on the ETA Form 9089.
- Whether the beneficiary possessed the two years of experience as an accountant as required by the terms of the ETA Form 9089.

It is important to address the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).³ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did

³ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and beneficiary are eligible for the requested employment-based immigrant visa classification.

The Beneficiary's Foreign Degree

In the instant case, the petitioner requests classification of the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii). This section grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

Section 101(a)(32) of the Act defines the term "profession" to include, but is not limited to, "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." If the offered position is not statutorily defined as a profession, "the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation." 8 C.F.R. § 204.5(l)(3)(ii)(C).

In addition, the job offer portion of the labor certification underlying a petition for a professional "must demonstrate that the job requires the minimum of a baccalaureate degree." 8 C.F.R. § 204.5(l)(3)(i)

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition.⁴ 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's*

⁴ The minimum requirements of the offered position are found at ETA Form 9089 Part H. In this case, Part H, lines 4 and 4-B of the labor certification state that the minimum educational requirement to qualify for the proffered position is a bachelor's degree in accounting or business administration. Line 9 states that a "foreign educational equivalent" is acceptable. Line 6 states that 24 months of experience in the job offered is required. Line 8 states that no other combination of education and experience is acceptable.

Tea House, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).⁵

Therefore, in order for the instant petition to be approved, the petitioner must establish that the beneficiary possesses a U.S. bachelor's degree (or foreign equivalent degree) from a college or university, and that the beneficiary meets all of the requirements of the labor certification.

As is explained below, while the regulatory language quoted above does not specifically state that a degree must come from an accredited college or university to qualify as a "baccalaureate degree or a foreign equivalent degree," that requirement is implicit in the regulations.

As stated by the U.S. Department of Education (DoEd) on its website:

The U.S. Department of Education does not accredit educational institutions and/or programs. However, the Secretary of Education is required by law to publish a list of nationally recognized accrediting agencies that the Secretary determines to be reliable authorities as to the quality of education or training provided by the institutions of higher education and the higher education programs they accredit. An agency seeking national recognition . . . must meet the Secretary's procedures and criteria for the recognition of accrediting agencies, as published in the *Federal Register* The Secretary . . . makes the final determination regarding recognition.

The United States has no . . . centralized authority exercising . . . control over postsecondary educational institutions in this country. . . . [I]n general, institutions of higher education are permitted to operate with considerable independence and autonomy. As a consequence, American educational institutions can vary widely in the character and quality of their programs.

. . . [T]he practice of accreditation arose in the United States as a means of conducting nongovernmental, peer evaluation of educational institutions and programs. Private educational associations of regional or national scope have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for

⁵ When determining whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the labor certification application, as certified by the DOL. *Id.* at 834.

evaluating institutions or programs to determine whether or not they are operating at basic levels of quality.

. . . Accreditation of an institution or program by a recognized accrediting agency provides a reasonable assurance of quality and acceptance by employers of diplomas and degrees.

www.ed.gov/print/admins/finaid/accred/accreditation.html (accessed June 4, 2013).

The DoEd's purpose in ascertaining the accreditation status of U.S. colleges and universities is to determine their eligibility for federal funding and student aid, and participation in other federal programs. Outside the federal sphere, the Council for Higher Education Accreditation (CHEA), an association of 3,000 degree-granting colleges and universities, plays a similar oversight role. As stated on its website:

Presidents of American universities and colleges established CHEA [in 1996] to strengthen higher education through strengthened accreditation of higher education institutions

CHEA carries forward a long tradition that recognition of accrediting organizations should be a key strategy to assure quality, accountability, and improvement in higher education. Recognition by CHEA affirms that standards and processes of accrediting organizations are consistent with quality, improvement, and accountability expectations that CHEA has established. CHEA will recognize regional, specialized, national, and professional accrediting organizations.

Accreditation, as distinct from recognition of accrediting organizations, focuses on higher education institutions. Accreditation aims to assure academic quality and accountability, and to encourage improvement. Accreditation is a voluntary, non-governmental peer review process by the higher education community The work of accrediting organizations involves hundreds of self-evaluations and site visits each year, attracts thousands of higher education volunteer professionals, and calls for substantial investment of institutional, accrediting organization, and volunteer time and effort.

www.chea.org/pdf/Recognition_Policy-June_28_2010-FINAL.pdf (accessed June 4, 2013).

The DoEd and CHEA recognize six regional associations – covering the entire United States and its outlying possessions – that accredit U.S. colleges and universities. The qualitative difference between accredited and unaccredited educational institutions is well recognized in the United States.

For example, the California Postsecondary Education Commission (CPEC), the state's planning and coordinating body for higher education from 1974 to 2011,⁶ includes the following language regarding the "benefits associated with accreditation" on its website:

Both the federal government and the states use accreditation as an indication of the quality of education offered by American schools and colleges.

At the federal level, colleges and universities must be accredited by an agency recognized by the United States Secretary of Education in order for it or its students to receive federal funds.

At the state level, California allows colleges and universities that are accredited by the Western Association of Schools and Colleges (the recognized regional accrediting agency for California) to grant degrees without the review and approval of the Bureau for Private Postsecondary Education (BPPE). A list of approved institutions is available at the California Bureau for Private Postsecondary Education (BPPE).

In some states, it can be illegal to use a degree from an institution that is not accredited by a nationally recognized accrediting agency, unless approved by the state licensing agency. This helps prevent the possibility of fraud

www.cpec.ca.gov/CollegeGuide/Accreditation.asp (accessed January 18, 2013).

The CPEC website goes on to warn about state laws in Illinois, Indiana, Maine, Michigan, Nevada, New Jersey, North Dakota, Oregon, Texas, and Washington regarding degree/diploma mills. *See id.*

As stated on the websites of DoEd and CHEA, accreditation is intended "to assure academic quality and accountability" (CHEA) and to provide "a reasonable assurance of quality and acceptance by employers of . . . degrees" awarded by the accredited institutions (DoEd). Moreover, the imprimatur of a regional accrediting agency guarantees that a school's degrees will be recognized and honored nationwide. By comparison, a degree from an unaccredited college or university carries no such guarantee.

The Immigration and Nationality Act is a federal statute with nationwide application. The regulations implementing the Act also have nationwide application. As quoted earlier in this decision, "professional" is defined in 8 C.F.R. § 204.5(l)(2) as "a qualified alien who holds at least a **United States baccalaureate degree** or a foreign equivalent degree." Similarly, to establish eligibility for classification as a professional 8 C.F.R. § 204.5(l)(3)(ii)(C) states that the alien must hold "a **United States baccalaureate degree** or a foreign equivalent degree." (Emphases added.) Accordingly, the AAO concludes that the regulations require degrees issued by U.S. educational institutions that are nationally accepted. The only way for a U.S. college or university to assure

⁶ The CPEC ceased operations on November 18, 2011, after its funding was eliminated. *See* <http://www.cpec.ca.gov/> (accessed June 8, 2012) and associated Press Release.

nationwide recognition for its degrees is for the institution to secure accreditation by a regional accrediting agency approved by the DoEd and CHEA.

A beneficiary who does not have a U.S. baccalaureate degree from an accredited U.S. college or university may still be eligible for classification as a professional if he or she has "a foreign equivalent degree." Since the U.S. degree must be from an accredited institution of higher education, a foreign degree must also be from an institution that had satisfied the relevant country's system of accreditation in order to qualify as a "foreign equivalent degree."

In summary, for the beneficiary's B.S.C. from [REDACTED] to qualify as a "foreign equivalent degree" to a U.S. bachelor's degree, it must have been issued by an institution of higher education that was accredited by the appropriate official accreditation authority in the Philippines.

The record includes a copy of the Philippine law that created the CHED – the "Higher Education Act of 1994" (Republic Act No. 7722). Among the powers and functions granted the Commission is to "monitor and evaluate the performance of programs and institutions of higher learning for appropriate incentives as well as the imposition of sanctions such as, but not limited to, diminution or withdrawal of subsidy, recommendation on the downgrading or withdrawal of accreditation, program termination or school closure." (Republic Act No. 7722, Section 8, Clause e.) With respect to accreditation, Section 14 of the law states "[t]he Commission shall provide incentives to institutions of higher learning, public and private, whose programs are accredited or whose needs are for accreditation purposes."⁷

⁷ The record also includes a copy of CHED Memorandum Order No. 01 (Series of 2005), entitled "Revised Policies and Guidelines on Voluntary Accreditation in Aid of Quality and Excellence in Higher Education." This memorandum was issued in 2005, after the beneficiary's degree was awarded by [REDACTED]. Therefore, it is not directly relevant to the accreditation system in place when the beneficiary's degree was issued. Instead, it appears to have been in effect when [REDACTED] was eventually accredited. The memorandum states that it supersedes CHED Order No. 31, s.1995, but a copy of this document was not provided. Nonetheless, the pertinent provisions of CHED Memorandum Order No. 01 (Series of 2005) read as follows:

Article I, clause 1: "It is the declared policy of the State to encourage and assist, through the Commission on Higher Education (CHED), higher education institutions (HEIs) which desire to attain standards of quality over and above the minimum required by the State."

Article I, clause 3: "The CHED acknowledges the pioneering work and efforts of the accrediting agencies now federated under the Federation of Accrediting Agencies of the Philippines (FAAP), namely the Association of Christian Schools, Colleges and Universities Accrediting Agency, Inc. (ACSCU-AAI), the Philippine Accrediting Association of Schools, Colleges and Universities (PAASCU), and the Philippine Association of Colleges and Universities Commission on Accreditation (PACU-COA)."

As indicated in the foregoing documentation, accreditation in the Philippines is designed to raise academic standards of institutions of higher education in the Philippines above the minimum standards required for government recognition. As in the United States with its accrediting

Article I, clause 5: "The CHED shall authorize federations/networks of accrediting agencies which shall certify to CHED the accredited status of programs/institutions granted by their member accrediting agencies"

Article II, clause 1: "Accreditation is a process for assessing and upgrading the educational quality of higher education institutions and programs through self-evaluation and peer judgment. It leads to the grant of accredited status by an accrediting agency and provides public recognition and information on educational quality.

Article IV (Accreditation Levels for Program Accreditation)

Clause 1: "For purposes of receiving benefits, educational programs are classified as candidate and one of four (4) accredited levels.

- a. Candidate status: for programs which have undergone a preliminary survey visit and are certified by the federation/network as being capable of acquiring accredited status within two years;
- b. Level I accredited status: for programs which have been granted initial accreditation after a formal survey by the accrediting agency and duly certified by the accreditation federation/network, effective for a period of three years;
- c. Level II re-accredited status: for programs which have been re-accredited by the accrediting agency and duly certified by the accreditation federation/network, effective for a period of three or five years based on the appraisal of the accrediting agency;
- d. Level III re-accredited status: for programs which have been re-accredited and have met the additional criteria/guidelines set by the federation/network for this level.
- e. Level IV accredited status: accredited programs which are highly respected as very high quality academic programs in the Philippines and with prestige and authority comparable to similar programs in excellent foreign universities.

The CHED Memo proceeds to list the benefits of accreditation, which expand with each level of accreditation from I through IV. Higher accreditation levels bring greater autonomy and freedom from government oversight.

organizations recognized by DoED and CHEA, accreditation of a college or university in the Philippines by the CHED is an indicator of a level of quality comparable to U.S. accreditation. Until it earns accreditation, a college or university in the Philippines has not established that it is operating at more than a minimum academic standard. Therefore, a degree from an unaccredited college or university in the Philippines is not considered equivalent to a degree from an accredited institution in the United States.⁸

The academic evaluations from [REDACTED] conclude that the beneficiary's B.S.C. from [REDACTED] is equivalent to a bachelor of business administration from an accredited college or university in the United States.⁹ However, as noted above, the evaluations fail to correctly address [REDACTED] unaccredited status when the beneficiary earned her degree. The [REDACTED] evaluation appears to base its conclusion on the fact that [REDACTED] was an accredited institution of higher education in the Philippines. The fact that the evaluation did not recognize that [REDACTED] was unaccredited at the time the beneficiary's degree was issued undermines its conclusion regarding the equivalency of the degree. In addition, the [REDACTED] evaluation states that it is based on the "credibility of [REDACTED]" but does not address the basis of this credibility, nor does it address the fact that [REDACTED] was unaccredited at the time it issued the beneficiary's degree. Therefore, the evaluations' conclusion that the beneficiary's degree is the foreign equivalent to a bachelor's degree from an accredited institution in the United States is not accepted by the AAO.

⁸ As previously discussed, the [REDACTED] four-year Bachelor of Science in Commerce was recognized by the Philippine Department of Education in 1968. It is unclear from the record, however, whether this specific degree program has ever been accredited by the CHED. Documentation submitted by the petitioner appears to show that the B.S.C. program received "candidate status" in May 2008. In June 2008 [REDACTED] "Business Administration Program" received Level 1 Accredited Status. As previously discussed, it is not clear whether Commerce and Business Administration are the same degree program. Thus, it is also noted that the petitioner failed to establish that the beneficiary's B.S.C. degree program at [REDACTED] was accredited in 2008, or anytime since then. Moreover, even if the B.S.C. degree program was accredited by the CHED in 2008, this would have occurred nine years after the beneficiary received her degree from [REDACTED] in 1999. It is undisputed that the beneficiary earned her degree from [REDACTED] at a time when the B.S.C. program, and the institution as a whole, lacked accreditation.

⁹ 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).

Based on the foregoing analysis, it is concluded that the petitioner failed to establish that the beneficiary's B.S.C. from ICC in 1999 is not a "foreign equivalent degree" to a United States baccalaureate degree, as required for the beneficiary to meet the definition of a professional in 8 C.F.R. § 204.5(l)(2) and to meet the minimum educational requirement of the offered position as set forth on the labor certification.¹⁰ Accordingly, the beneficiary is not eligible for preference visa classification as a professional under section 203(b)(3)(A)(ii) of the Act.

The Beneficiary's Experience

Beyond the decision of the director,¹¹ the evidence in the record also does not establish that the beneficiary had the requisite 24 months of experience as an accountant as of the priority date.

Prior to her work with the petitioner,¹² the labor certification lists two part-time jobs the beneficiary had as an accountant – including a 20-hour per week position with [REDACTED] in Los Angeles, California, from January 26, 2004 to May 20, 2005; and a 25-hour per week position with [REDACTED] also in Los Angeles, from May 22, 2005 to December 29, 2006. As evidence thereof, letters were submitted with the petition from senior officials of those two companies, which describe the duties performed and the time frames of the jobs. Thus, the beneficiary's part-time employment with [REDACTED] - essentially half-time work over a time span of two years and 11 months – does not represent 24 months of full-time qualifying experience for purposes of satisfying the labor certification requirement.

The ETA Form 9089 lists one other job the beneficiary allegedly held as an accountant with [REDACTED] Philippines, from April 1, 1999 to June 1, 2001 – a period of 26 months. However, no letter from the company was submitted with the petition to confirm the beneficiary's employment. The beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary's experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). In its NOID/RFE, the AAO afforded the petitioner the opportunity to submit such a letter from [REDACTED] but no such letter was provided, or any other evidence that the beneficiary was employed by the company. Going on record without supporting documentation is not sufficient for purposes of meeting the burden of

¹⁰ As is noted above, the labor certification requires a bachelor's degree in accounting or business administration. Part H, Line 9 states that a "foreign educational equivalent" is acceptable. Line 8 states that no other combination of education and experience is acceptable.

¹¹ An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director 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).

¹² The ETA Form 9089 states that the beneficiary began working for the petitioner as an accountant on January 3, 2007. The petitioner's work with the petitioner cannot be counted toward fulfilling the 24-month experience requirement because at Part J, line 21 of the labor certification, the petitioner indicated that the beneficiary did not gain any qualifying experience with the employer in a substantially comparable position to the job offered.

proof in these proceedings. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

For the reasons discussed above, the petitioner has failed to establish that the beneficiary had 24 months of qualifying experience as an accountant as of the priority date. Since the beneficiary does not fulfill the experience requirements in Part H of the labor certification, she does not qualify for the job offered.

Conclusion

The beneficiary was awarded a bachelor's degree from [REDACTED] was not an accredited institution of higher education even though there existed a system of accreditation at that time in the Philippines. Although [REDACTED] later obtained Level 1 accreditation of some of its degree programs in 2008, it was not accredited when the beneficiary's degree was awarded. The credentials evaluations in the record of proceeding did not correctly address [REDACTED] lack of accreditation at the time the beneficiary's degree was issued.

Given these facts, the AAO concludes that the petitioner failed to establish that the beneficiary's bachelor's degree is the foreign equivalent of a U.S. bachelor's degree.

Therefore, the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" within the meaning of 8 C.F.R. § 204.5(1)(2), and thus is not eligible for preference visa classification as a professional under section 203(b)(3)(A)(ii) of the Act. In addition, it is also concluded that the beneficiary does not meet the educational requirements of the offered position as set forth on the labor certification. Finally, beyond the decision of the director, the petitioner also failed to establish that the beneficiary satisfied the experience requirements for the offered position as set forth on the labor certification.

For the reasons stated above, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.