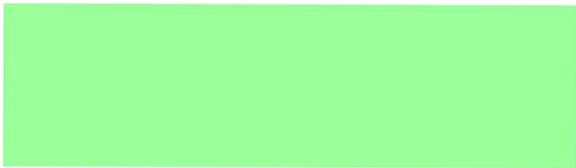


(b)(6)

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



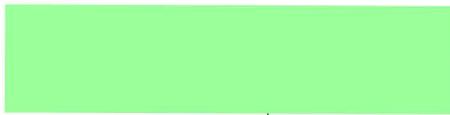
U.S. Citizenship
and Immigration
Services



DATE: **MAR 27 2013** OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(ii)

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 petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a construction corporation. It seeks to permanently employ the beneficiary in the United States as a project manager. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), 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 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

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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on June 23, 2009.² The Immigrant Petition for Alien Worker (Form I-140) was filed on April 9, 2010.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, provide:

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 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).

² If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

On the ETA Form 9089, the "job offer" position description for a project manager provides:

Oversee the construction of commercial and residential projects; determine labor and financial requirements for projects; prepare budget estimates and progress and cost tracking reports; evaluate projects for quantity of materials and labor required and select sub-contractors; visit and analyze work sites for surface topography and drainage and ensure electricity and water availability; prepare bids with costs, timeline, expenses, material specifications and labor force; negotiate project bids with clients and incorporate the terms in contract agreements; develop blueprints using engineering software programs such as CAD, and determine appropriate construction methods; oversee sub-contractors that perform specialized work; obtain city, municipal or state permits to carry out jobs as required, and monitor all construction projects from start to completion.

Regarding the minimum level of education and experience required 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 Study: Construction Management.

5. Is training required in the job opportunity?

The petitioner checked "no" to this question.

6. Is experience in the job offered required for the job?

The petitioner checked "yes" to this question.

6-A. If Yes, number of months experience required:

24.

7. Is there an alternate field of study that is acceptable?

The petitioner checked "no" to this question.

8. Is there an alternate combination of education and experience that is acceptable?

The petitioner checked "yes" to this question.

8-A. If yes, specify the alternate level of education required:

Associate's.

8-C. If applicable, indicate the number of years experience acceptable in question 8:

4.

9. Is a foreign educational equivalent acceptable?

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

14. Specific skills or other requirements: [Blank].

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. 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 *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As set forth above, the proffered position requires a Bachelor's degree in Construction Management and 24 months of experience in the job offered as a project manager, or alternatively an Associate's degree and four years of experience.

On the ETA Form 9089, signed by the beneficiary, the beneficiary represented that the highest level of achieved education related to the requested occupation was "Bachelor's." He listed the institution of study where that education was obtained as [redacted] and the year completed as 1997.

In support of the beneficiary's educational qualifications, the petitioner submitted copies of a certificate in Introductory Vocational Skills awarded to the beneficiary from [redacted] on October 7, 1993; a National Certificate in Engineering in Civil Engineering from the [redacted] dated July 15, 1997; and the beneficiary's 1997 transcripts from the [redacted] dated June 21, 2010.

The petitioner additionally submitted a credentials evaluation, dated June 13, 2005, from [REDACTED] on [REDACTED] letterhead. The evaluation concludes that the beneficiary's National Certificate in Engineering from the [REDACTED], is equivalent to an Associate's degree in Civil Engineering Technology from a regionally accredited educational institution in the United States. The evaluation also concludes that the beneficiary's six years of progressively advanced employment in construction management is equivalent to two academic years (60 semester credits) of undergraduate study in construction management. The evaluation further concludes that the beneficiary's education and experience "together represent, in scope and intent, the equivalent of completion of a Bachelor's Degree in Civil Engineering Technology and Construction Management from a regionally accredited institution of higher education in the United States.

The director denied the petition on August 10, 2010. He determined that the beneficiary did not possess a U.S. Bachelor's degree or (foreign) equivalent degree as required in the labor certification, nor a U.S. Associate's degree or foreign equivalent degree as required as an alternate level of education.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel submitted the beneficiary's 1997 transcripts from the [REDACTED] and copies of previously submitted documents.

On June 10, 2010, the director issued a Request for Evidence (RFE) noting that the petitioner selected box "e" on the Form I-140, Part 2, indicating that it was filing the petition in the professional classification. The director further noted that the alternate requirement for the position, an Associate's degree, is less than a Bachelor's degree and that the position could not be considered for the professional classification. In her response to the RFE, counsel stated that it had no objection to changing the requested classification to skilled worker. However, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to United States Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

Even if the AAO were to accept that the petitioner is requesting classification as a skilled worker, the beneficiary does not meet the terms of the labor certification. Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable 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. *See also* 8 C.F.R. § 204.5(1)(2).

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(B) states:

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.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4). The labor certification must require at least two years of training and/or experience. Relevant post-secondary education may be considered as training. *See* 8 C.F.R. § 204.5(l)(2).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least two years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate about the beneficiary’s qualifications. *Madany*, 696 F.2d at 1015. 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.” *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].” *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification.

As set forth above, the proffered position requires a Bachelor’s degree in Construction Management and 24 months of experience in the job offered as a project manager, or alternatively an Associate’s degree and four years of experience. The record reflects that the beneficiary possesses a National Certificate in Engineering from the National Council for Educational Awards, Regional Technical College.

On January 4, 2013, the AAO issued a request for evidence to the petitioner. In this request, the AAO noted that there was no evidence in the record of proceeding that the beneficiary possesses the foreign equivalent of a U.S. bachelor’s degree in construction management or an associate’s degree, as required by the terms of the labor certification. The beneficiary’s transcript from the [redacted] reflects that he completed two semesters in 1997. The evidence does not indicate that the beneficiary completed a two-year course of study at the institution. The AAO also advised that according to the American Association of Collegiate Registrars and Admissions Officer³ (AACRAO) Electronic Database for Global Education (EDGE), a National Certificate “awarded

³ 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>.

after completion of two years of post-secondary study from an institute of technology (formerly known as regional technical colleges)” in Ireland is “comparable to two years of university study in the United States.” The labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of education and experience and/or a quantifiable amount of work experience when the labor market test was conducted.⁴

Nonetheless, the AAO RFE permitted the petitioner to submit any evidence that it intended the labor certification to require an alternative to a U.S. bachelor’s or associate’s degree or a single foreign equivalent degree, as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.⁵ Specifically, the AAO requested that the petitioner provide a copy of the signed recruitment report required by 20 C.F.R. § 656, together with copies of the prevailing wage determination, all recruitment conducted for the position, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts.

In response to the AAO RFE, counsel submits two additional academic evaluations of the beneficiary’s education and experience.

⁴ The DOL has provided the following field guidance: “When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the [labor certification] as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job.” See Memo. from [redacted] Acting Regl. Adminstr., U.S. Dep’t. of Labor’s Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep’t. of Labor’s Empl. & Training Administration, Interpretation of “Equivalent Degree,” 2 (June 13, 1994). The DOL’s certification of job requirements stating that “a certain amount and kind of experience is the equivalent of a college degree does in no way bind [USCIS] to accept the employer’s definition.” See Ltr. From [redacted] Certifying Officer, U.S. Dept. of Labor’s Empl. & Training Administration, to [redacted] (March 9, 1993). The DOL has also stated that “[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree.” See Ltr. From [redacted] Certifying Officer, U.S. Dept. of Labor’s Empl. & Training Administration, to [redacted] (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.

⁵ In limited circumstances, USCIS may consider a petitioner’s intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer’s subjective intent may not be dispositive of the meaning of the actual minimum requirements of the offered position. See *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). The best evidence of the petitioner’s intent concerning the actual minimum educational requirements of the offered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence ensures that the stated requirements of the offered position as set forth on the labor certification are not incorrectly expanded in an effort to fit the beneficiary’s credentials. Such a result would undermine Congress’ intent to limit the issuance of immigrant visas in the professional and skilled worker classifications to when there are no qualified U.S. workers available to perform the offered position. See *Id.* at 14.

Counsel submits a credentials evaluation, dated February 14, 2013, from [REDACTED] on [REDACTED] letterhead. The evaluation concludes that the beneficiary's National Certificate in Engineering from the [REDACTED] is equivalent to an Associate's degree in Civil Engineering from an accredited institution of higher education in the United States. The evaluation also concludes that the beneficiary's six years of progressively advanced employment in construction management reflect the time equivalent of not less than two additional years of Bachelor's-level academic training in Construction Management. The evaluation further concludes that, based on the beneficiary's coursework and work experience, the beneficiary has attained the equivalent of a Bachelor of Science degree in Construction Management from an accredited institution of higher education in the United States.

Counsel submits a second credentials evaluation, dated February 15, 2013, from [REDACTED] letterhead. The evaluation concludes that the beneficiary's coursework at the [REDACTED] is equivalent to an Associate of Science degree in Civil Engineering from an accredited institution of higher education in the United States.

On appeal and in response to the AAO's RFE, counsel asserts that the beneficiary was previously approved to hold the U.S. equivalent of a bachelor's degree based on the evaluation from [REDACTED]. The evaluation used an equivalence to determine that three years of experience equaled one year of college to conclude that the beneficiary had achieved the equivalent of a U.S. four-year bachelor's degree in construction management. However, that regulatory-prescribed equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

In general.-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 left to USCIS to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. 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).⁶ *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 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).⁷

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the

⁶ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

⁷ The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

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).

Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

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 Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. 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." *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 form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

As noted above and advised in the RFE issued to the petitioner by this office, we have reviewed EDGE. 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.⁸ 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.⁹

⁸ *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.

⁹ 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 prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The

EDGE's credential advice provides that a National Certificate "awarded after completion of two years of post-secondary study from an institute of technology (formerly known as regional technical colleges)" in Ireland is "comparable to two years of university study in the United States."

As noted in the AAO's RFE, the beneficiary's transcript from the [REDACTED] reflects that he completed two semesters in 1997. However, the evidence does not indicate that the beneficiary completed a two-year course of study at the institution. The beneficiary's transcripts in the record do not provide the months of attendance – only the year and it states that the beneficiary attended two semesters. This was not addressed at all in counsel's response to the AAO's RFE. None of the evaluations state that they relied upon originals or copies of the beneficiary's complete transcripts. Rather, they make a general statement that they relied upon the beneficiary's diploma, resume or representations. Further, none of the evaluations specifically address the conclusions of EDGE, as required by the AAO RFE.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); see also *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). Additionally, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate.

The petitioner has failed to establish that the beneficiary possesses the minimum educational requirements of the offered position set forth on the labor certification by the priority date. Thus, he does not qualify for classification as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act.

Beyond the decision of the director,¹⁰ the petitioner has also not established that the beneficiary possessed all of the required experience as required by the labor certification. 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'l Comm'r 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 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

court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

¹⁰ 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).

position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *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 a Bachelor's degree in Construction Management and 24 months of experience in the job offered as a project manager, or alternatively an Associate's degree and four years of experience. On the labor certification, the beneficiary claims to qualify for the offered position based on experience as a construction manager for the petitioner from April 11, 2008 to the priority date, and as a construction manager for [REDACTED] [REDACTED] 1, 2004 through March 15, 2008.

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). The record contains an experience letter dated June 10, 2009 from [REDACTED] letterhead, stating that the beneficiary worked for the company as a construction manager from November 2004 through March 2008. The beneficiary's experience fails to add up to the required four years of experience.

Further, the record contains an experience letter dated April 20, 2005 from [REDACTED] letterhead, stating that the beneficiary worked for the company as a Technician and Assistant Construction Manager from 1997 through 1998, and as a Construction Manager from 1998 through November 2004. This experience is not listed on the labor certification. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

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

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. Here, that burden has not been met.

ORDER: The appeal is dismissed.