



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: NOV 01 2013

OFFICE: NEBRASKA SERVICE CENTER

FILE: [Redacted]

IN RE:

Petitioner:

Beneficiary:

[Redacted]

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

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based petition was denied by the Director, Nebraska Service Center (director). The Administrative Appeals Office (AAO) dismissed the petitioner's appeal. The matter is now before the AAO on a motion to reopen and a motion to reconsider. The AAO will grant the motions but affirm the AAO's August 2, 2013, dismissal of the appeal. The petition will remain denied.

The petitioner is a Montessori school. It seeks to employ the beneficiary permanently in the United States as a kindergarten teacher 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). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the visa classification selected by the petitioner was not supported by the ETA Form 9089, and denied the petition accordingly.

On August 2, 2013, the AAO dismissed the appeal, concurring with the director that the visa classification of a third preference "professional"<sup>1</sup> is not supported by the ETA Form 9089, and further determining that the beneficiary does not satisfy the minimum level of education required for the professional visa classification, or that the beneficiary possesses the required training, special skills and experience as set forth on the labor certification.<sup>2</sup>

The petitioner, through counsel, has filed a motion to reopen and a motion to reconsider. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Included with the motion, counsel submits additional evidence consisting of tax and state registration documents related to the petitioner's identity and the "[REDACTED]"<sup>3</sup> as well as a second credentials evaluation from Professor [REDACTED]. In this evaluation, Professor [REDACTED] postulates his opinion on a formula of equating three years of work experience to one year of college

<sup>1</sup> The offered position is for a kindergarten teacher. In its previous decision, the AAO found that this position is statutorily designated as a profession under section 101(a)(32) of the Act. (i.e. teachers in elementary or secondary schools).

<sup>2</sup> The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

<sup>3</sup> The AAO's prior decision indicated (footnote 1) that the petitioner's name as specified on the Form I-140 and on the labor certification is "[REDACTED]". There is no indication in the record that this entity is a corporation or has its own federal identification tax number as indicated on the Form I-140, which, as suggested by the petitioner's documents, appears to belong to the "[REDACTED]". Further, the petitioner has submitted no evidence establishing that "[REDACTED]" was the registered fictitious business name of the [REDACTED] as of the priority date of November 15, 2010.

training. Including the beneficiary's work experience from April 1997 to March 2002, and the work experience gained with the petitioner since 2005, combined with her training represented by her 2003 Montessori Diploma, Professor [REDACTED] determines that the beneficiary has the U.S. equivalent of at least a Bachelor of Education.

While the AAO accepts the petitioner's motions as a motion for reopening and reconsideration, the AAO does not concur that the petition merits approval. At the outset, the petitioner requested the visa classification for the beneficiary on the Form I-140 as a professional pursuant to section 203(b)(3)(A)(ii) of 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. *See also* 8 C.F.R. § 204.5(l)(2). For a professional visa classification, the petition must be submitted with evidence that the beneficiary holds a U.S. bachelor's degree or a foreign equivalent degree and by evidence that she is a member of the professions. The bachelor's degree shall be in the form of an official college or university record showing the date that it was awarded and the area of concentration of study. 8 C.F.R. § 204.5(l)(3)(ii)(C). This regulation uses a singular description of a foreign equivalent degree.

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, the United States Citizenship and Immigration Services (USCIS) properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."<sup>4</sup> *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008)(for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree.)

Moreover, the beneficiary's degree must also be from a college or university. For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study."<sup>5</sup>

Thus, the plain meaning of the Act and the regulations is that the beneficiary of a professional petition must possess, at a minimum, a degree from a college or university that is a U.S. baccalaureate degree or a foreign equivalent degree.

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<sup>4</sup> Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

<sup>5</sup> Compare 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university, school or other institution of learning relating to the area of exceptional ability").

Additionally, the job offer portion of the labor certification underlying a petition for a professional “must demonstrate that the job requires a minimum of a baccalaureate degree.” 8 C.F.R. § 204.5(l)(3)(i). In this case, on Part H.8, the petitioner indicated that it would accept, an alternate combination of education and experience designated in H.8-A as “other” and defined in H.8-B as, “Using 3 for 1 equivalency to be combination of B.A. level education + e” [presumed to be experience].” As set forth above and in the AAO’s previous decision, a professional classification requires a U.S. bachelor’s degree or a foreign equivalent degree represented by an official college or university record designating the date of conferral and the field of study. The acceptance of the alternate combination of education and experience, less than an actual bachelor’s degree reflects that the ETA Form 9089 does not require at a minimum a U.S. bachelor’s degree or foreign equivalent degree and therefore, does not support the visa designation of third preference professional designated on the Form I-140.

For the reasons stated above, and because Professor [redacted] analysis relies primarily on the beneficiary’s work experience to reach an educational equivalency,<sup>6</sup> it cannot be considered probative of the beneficiary’s possession of a four-year foreign equivalent degree as represented by an official college or university record. Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B nonimmigrant visa classification, the “equivalence to completion of a college degree” as including, in certain cases, a specific combination of education and experience represented by the three for one formula). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language. 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, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). 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.

The petitioner has failed to establish that the ETA Form 9089 supports the visa classification designated on the Form I-140. The petitioner has also failed to establish that the beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree from a college or university and qualifies for a professional classification.

The AAO also observes that the petitioner submitted no evidence on motion that addresses the deficiencies set forth in the AAO’s August 2, 2013, decision regarding the lack of transcripts supporting the beneficiary’s Montessori diploma or the employment verification letters submitted in support of her claimed qualifying experience. Therefore, the AAO continues to find that the

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<sup>6</sup> As stated in the AAO’s August 2, 2013, decision, based on the American Association of Collegiate Registrars and Admissions Officers’ (AACRAO’s) educational equivalency determination of the Indian three-year bachelor’s degree, the AAO finds that the beneficiary’s three-year foreign bachelor’s degree is comparable to three years of undergraduate university study in the United States.

petitioner failed to establish that the beneficiary meets the training, special skills and experience requirements of the labor certification.

Based on the foregoing, the AAO reaffirms its previous dismissal of the appeal on August 2, 2013.

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

**ORDER:** The motion to reopen and motion to reconsider is granted. The prior decision AAO dated August 2, 2013 is affirmed. The petition remains denied.