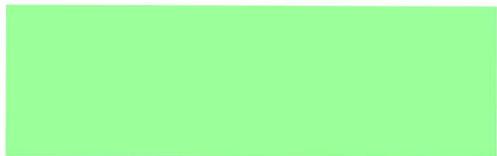


(b)(6)

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

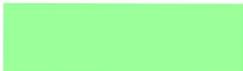


U.S. Citizenship
and Immigration
Services



DATE: **OCT 02 2013**

OFFICE: TEXAS SERVICE CENTER

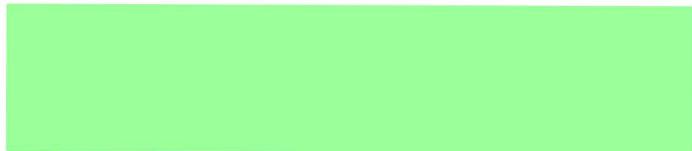
FILE: 

IN RE: Petitioner:
 Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner is an information technology consulting firm. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.¹ 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.

On June 26, 2013, the AAO dismissed the subsequent appeal, affirming the director's denial. The petitioner then filed a motion to reopen and reconsider the AAO decision. The record shows that the motions are properly filed and timely.

As set forth in the director's November 20, 2012 denial, the issue in this case was whether or not the beneficiary had the education required by the terms of the labor certification. The petitioner submitted new evidence with the motion. Thus, the motion to reopen is granted. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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. In the instant case, the petitioner indicated on the Form I-140 petition that it was requesting the professional classification.

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

¹ On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on March 11, 2011.² The Immigrant Petition for Alien Worker (Form I-140) was filed on October 19, 2011.

On the ETA Form 9089, 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 degree.
- 4-B. Major Field Study: Computer Science, Engineering, MIS, Science or Business Administration.
- 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 "no" to this question.
- 9. Is a foreign educational equivalent acceptable?
The petitioner listed "yes" that a foreign educational equivalent would be accepted.
- 6. Experience: None required.
- 14. Specific skills or other requirements: Any combination of education equivalent to US Bachelors is acceptable.

As set forth above, the proffered position requires a bachelor's degree in Computer Science, Engineering, MIS, Science or Business Administration or any combination of education equivalent to a U.S. bachelor's degree. As stated in the previous AAO decision, the beneficiary's Bachelor of Science from [REDACTED] and Diploma from [REDACTED] and credential evaluations from [REDACTED] and [REDACTED] failed to establish that the beneficiary held a foreign degree equivalent to a bachelor's degree in Computer Science, Engineering, MIS, Science or Business Administration in the United States as of the priority date. With its motion, the petitioner resubmitted the credential evaluations from Mr. [REDACTED] and Mr. [REDACTED] as well as the same unpublished AAO decision submitted on appeal. As stated in the previous AAO decision, the conclusions of the evaluations submitted by the petitioner are in

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.

conflict with other publicly available information, namely that [REDACTED] is not an accredited educational institution in India.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The previous AAO decision considered the recruitment materials submitted in determining the petitioner's intention concerning the minimum requirements of the position, however, the petitioner indicated on the Form I-140, Box 2.e. that the petition was being filed for a professional, which requires a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree.³

The previous AAO decision also noted that the petitioner maintains, correctly, that the beneficiary's three-year Bachelor of Science degree from [REDACTED] is equivalent to three years of university study in the United States. In addition, the labor certification provided that any combination of education equivalent to a U.S. bachelor's degree would be accepted. The only issue is whether the beneficiary's PGD from [REDACTED] amounts to a year of baccalaureate study at an accredited U.S. institution to amount to a full four-year U.S. baccalaureate degree.

As stated in the previous AAO decision, the director's August 22, 2012 request for evidence (RFE) to the petitioner requested evidence to demonstrate that the beneficiary's PGD was issued by an accredited institution by the All-India Council for Technical Education (AICTE). The petitioner submitted no evidence in response to that RFE, on appeal, or with this motion that [REDACTED] is accredited by AICTE.

Instead, counsel cites to the credential evaluations submitted as proof that the beneficiary has the required education as of the priority date. The evaluation submitted from Mr. [REDACTED] states that [REDACTED] is affiliated with [REDACTED] which is "approve[d]" by the Department of Rural Development, Government of India. The evaluation from

³ In response to the director's RFE, counsel asserted that the petition should be considered under the skilled worker category should USCIS find that the labor certification requires less than a bachelor's degree. As the labor certification unequivocally requires a U.S. bachelor's degree or its educational equivalent, the director appropriately declined to consider the matter under the skilled worker category.

Mr. [REDACTED] states that [REDACTED] “is a competitive institution” and that the program “significantly parallel[s] those parameters upheld by accredited colleges and universities of precedence in the United States.”

On motion, counsel challenges the AAO’s use of AICTE in determining whether [REDACTED] provided an education equivalent to or higher in standard and norm than the education required by U.S. institutions.⁴

As stated in the prior AAO decision, AICTE was established in November 1945 as a “national level Apex Advisory Body to conduct survey[s] on the facilities on technical education and to promote development in the country in a coordinated and integrated manner.” See <http://www.aicte-india.org/aboutus.htm> (accessed June 21, 2013). AICTE has the “statutory authority for planning, formulation and maintenance of norms and standards, quality assurance through accreditation, funding in priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring coordinated and integrated development and management of technical education in the country.” *Id.* As AICTE ensures the foundation of norms and standards, the educational value of an unaccredited institution cannot be properly assessed. The AICTE website does not include [REDACTED] as an accredited institution within the state of Andhra Pradesh, India, or within any other Indian state.

On motion, counsel states that AICTE does not state that [REDACTED] does not follow the norms and standards required by U.S. institutions and that AICTE must provide an analysis as to why certain institutions, such as [REDACTED] are not accredited as opposed to others. Counsel asserts that AICTE must provide an analysis as to why [REDACTED] is not accredited in order for it to be accepted as the standard for determining what constitutes an official college or university pursuant to 8 C.F.R. § 204.5(l)(3)(ii)(C). The AICTE website indicates that it maintains the norms and standards and assurance of quality through its accreditation. Its purpose is not to evaluate particular institutions for use in U.S. immigration applications. It is precisely this neutrality that increases its reliability in determining the equivalency to a U.S. bachelor’s degree for immigration purposes.⁵

⁴ On motion, counsel stated that the hyperlink provided in the prior AAO decision did not link to the AICTE information cited. We provide an additional hyperlink for the petitioner’s convenience. See http://www.nbaind.org/Files/State_Wise_Accredited_List.pdf (accessed August 21, 2013). It is noted that the information cited is easily accessible through the AICTE main web page as it is listed under a tab titled “Reports” and the document is named “Accredited Institutions.”

⁵ It is noted that AICTE is not the only institution that reviews Indian education facilities. The National Assessment and Accreditation Council (NAAC), for example, is charged with performance evaluation, assessment and accreditation of universities and colleges in the country. See <http://www.ugc.ac.in/page/NAAC.aspx#> (accessed August 21, 2013). Accreditation through a different Indian authority would be acceptable, however, [REDACTED] is not accredited through the NAAC either.

In order to ensure that foreign degrees are equivalent to a U.S. program, USCIS must have a means of comparing different countries' education systems, institutions, and degrees. The best way of determining this equivalency is by using the individual country's accreditation system. Without such an accreditation, we are unable to ascertain the integrity of the program to accurately compare it to the equivalent of a U.S. degree as specified on the labor certification. USCIS will consider other evidence in evaluating equivalencies; however, evidence of accreditation must be rebutted, it cannot be discarded altogether. Although the petitioner submitted two credentials evaluations stating that the beneficiary's degrees are equivalent to a U.S. bachelor's degree, neither evaluator submitted evidence to demonstrate how the [REDACTED] program is equivalent to a U.S. baccalaureate program. The evaluators name the courses taken, but do not provide any information concerning the actual coursework, the requirements of the degree program, or the overall requirements of the institution. As a result, the evaluations are not sufficient to demonstrate that the degree from [REDACTED] was a degree issued by an official college or university pursuant to 8 C.F.R. § 204.5(l)(3)(ii)(C).

Although the labor certification and the petitioner's recruitment materials establish that it would accept an equivalent to a U.S. baccalaureate degree, the petitioner has not demonstrated that the beneficiary possesses such an equivalency. The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and, thus, does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act.

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

ORDER: The appeal is dismissed.