



U.S. Citizenship
and Immigration
Services

(b)(6)

[REDACTED]

DATE: **APR 03 2014** OFFICE: NEBRASKA SERVICE CENTER [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

[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 Director, Nebraska Service Center, (director) denied the employment-based immigrant visa petition.¹ The petitioner appealed this denial to the Administrative Appeals Office (AAO), and the AAO dismissed the appeal on June 5, 2013. The petitioner filed a motion to reopen and motion to reconsider the AAO's decision. The AAO granted the motions and affirmed its prior decision on August 29, 2013. The petitioner filed a second motion to reopen and motion to reconsider. The AAO granted the motion to reopen and affirmed its prior decision on February 4, 2014. The matter is once again before the AAO on a motion to reopen and motion to reconsider. The prior decision of the AAO, dated February 4, 2014, will be reopened, a new decision will be entered, and the petition will remain denied.

The petitioner describes itself as a "Specialized Software Consulting" business. It seeks to employ the beneficiary permanently in the United States as a "Programmer Analyst." As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director's decision denying the petition concludes that the beneficiary did not possess the minimum education required to perform the offered position by the priority date. The AAO affirmed the director's decision in three separate decisions and further held that the petitioner had not established its ability to pay the proffered wages for the beneficiary and other sponsored workers for 2003, 2005 and 2009.

The history in this case is documented by the record and incorporated into the decision. Further elaboration of the history will be made only as necessary. All issues previously discussed and not raised by the petitioner in the instant motion will not be further addressed in this decision.

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. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Counsel states on motion that USCIS erred in requiring that a beneficiary's degree be issued by an accredited institution in order for the beneficiary to satisfy the requirements of the labor certification. However, this assertion is not supported by any precedent decision or other authority. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The 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). As the petitioner's assertion is not supported by any precedent decision or other authority, this argument cannot be considered a proper basis for a motion to reconsider.

¹ It is noted that another Form I-140, Immigrant Petition for Alien Worker, () was filed by the instant petitioner on behalf of the same beneficiary on August 23, 2010, seeking to employ the beneficiary as a skilled worker under Section 203(b)(3) of the Immigration and Nationality Act. The petition was approved on April 28, 2011.

The AAO conducts appellate review on a *de novo* basis.² The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal or motion. A 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.³

Beneficiary's Qualifications

The record reflects that the Form I-140 requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A).⁴ On motion, the petitioner only addresses whether the beneficiary is qualified under the professional worker category. Therefore, on motion the AAO will only consider whether the petition may be approved in the professional classification.⁵

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(1)(2).

The regulation at 8 C.F.R. § 204.5(1)(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.

² *See* 5 U.S.C. 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also* *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

³ *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).

⁴ Employment-based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. The petitioner indicates the requested classification by checking a box on the Form I-140. The Form I-140 version in effect when this petition was filed did not have separate boxes for the professional and skilled worker classifications. In the instant case, the petitioner selected Part 2, Box e of Form I-140 for a professional or skilled worker.

⁵ In its decision affirming the director's decision that denied the instant petition, the AAO addressed whether the beneficiary met the requirements of the labor certification for both the professional and skilled worker categories. The AAO determined that the petitioner had not established that the beneficiary met the requirements of the labor certification under either category.

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. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing’s 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).

Therefore, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor’s degree as a minimum for entry; the beneficiary possesses a U.S. bachelor’s degree or foreign equivalent degree from a college or university; the job offer portion of the labor certification requires at least a bachelor’s degree or foreign equivalent degree; and the beneficiary meets all of the requirements of the labor certification.

It is noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional. 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 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).

It is significant that both section 203(b)(3)(A)(ii) of the Act and the relevant regulations use the word “degree” in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress’ requirement of a single “degree” for members of the professions is deliberate.

The regulation also 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.” 8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). In another context, Congress has broadly referenced “the possession of a degree, diploma, certificate, or similar award from a college, university, school, or

other institution of learning.” Section 203(b)(2)(C) of the Act (relating to aliens of exceptional ability). However, for the professional category, it is clear that the degree must be from a college or university.

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 a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. 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).

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

In the instant case, the labor certification states that the offered position, “Programmer Analyst,” has the following minimum requirements:

EDUCATION

College: 4 years

College Degree Required: “Bachelor of Science”

Major Field of Study: Computer Science, Engineering, or Math

Experience: 2 years in the job offered or 2 years in the related occupation of Systems Analyst

The record contains a copy of the beneficiary’s Bachelor of Commerce degree and transcripts from [REDACTED] awarded on August 3, 1998. The record also contains a certificate from [REDACTED] which states that the beneficiary obtained an “Advanced Diploma in Software Technology & Systems Management” on December 15, 1995.

As noted by the AAO in the decision dismissing the appeal, the petitioner submitted two credentials evaluations in support of its assertion that the beneficiary has the minimum education required by the labor certification application. The record contains the following evaluations of the beneficiary’s credentials:

- [REDACTED] Career Consulting International (evaluation dated March 14, 2007) - Dr. [REDACTED] stated that the beneficiary’s three-year Bachelor of Commerce degree is equivalent to a four-year Bachelor of Business Administration degree, representing 120 semester credit hours, from a regionally accredited institution of higher education in the United States.
- [REDACTED] (evaluation dated March 14, 2007) - Dr. [REDACTED] stated that the beneficiary’s three-year Bachelor of Commerce degree is equivalent to a four-year Bachelor of Business Administration degree, representing 120 semester credit

hours, from a regionally accredited institution of higher education in the United States.

Neither [REDACTED] conclude that the beneficiary has the foreign equivalent of a U.S. bachelor's degree in one of the required fields of study: Computer Science, Engineering, or Math.

The AAO fully discussed the deficiencies in each evaluation, and gave the petitioner the opportunity to submit a new evaluation or other evidence to overcome the deficiencies. For the reasons set forth in the AAO decision dated June 5, 2013, which are incorporated herein by reference, the evaluations submitted by [REDACTED] do not establish that the beneficiary has the foreign equivalent of a U.S. bachelor's degree in computer science, engineering or math. On motion, the petitioner has not submitted a new credentials evaluation or other evidence to overcome the AAO's concerns with the evaluations of record.

As stated in the AAO's previous decisions, the AAO reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁶ USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁷ According to EDGE, a three-year Bachelor of Commerce degree from India is comparable to "three years of university study in the United States." Therefore, the beneficiary's Bachelor of Commerce degree is insufficient to qualify him for professional worker classification under Section 203(b)(3)(A)(ii) of the Act.

The AAO also previously cited to EDGE regarding whether the beneficiary's diploma from [REDACTED] combined with his three-year Bachelor of Commerce Degree qualifies him under the professional worker category. EDGE states that the entrance requirement for postgraduate diplomas is completion of a two- or three-year baccalaureate degree. EDGE further states that a postgraduate

⁶ 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." See <http://edge.aacrao.org/info.php>.

⁷ 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. v. USCIS*, 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 court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

diploma following a two-year bachelor's degree represents attainment of a level of education comparable to one year of university study in the United States. EDGE also states that a postgraduate diploma following a three-year bachelor's degree represents attainment of a level of education comparable to a bachelor's degree in the United States. However, the "Advice to Author Notes" section states:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

On motion, counsel asserts that neither the labor certification nor the recruitment conducted in support of the application explicitly stated that the postgraduate diploma must be issued by an accredited institution. Counsel states that USCIS is imposing a requirement that the college or university degree must come from an accredited institution that is not in the regulation. *See*, 8 C.F.R. § 204.5(1)(3)(ii)(C).

The evidence in the record on appeal did not establish that the beneficiary's postgraduate diploma was issued by an accredited university or institution approved by AICTE, or that a two- or three-year bachelor's degree was required for admission into the program of study. On motion, counsel cites a document from the AICTE that lists unapproved institutions. Counsel notes that because the [REDACTED] is not listed as an unapproved institution the AAO should view this diploma together with the beneficiary's bachelor's degree as being the foreign equivalent of a U.S. bachelor's degree. However, counsel has not provided evidence that the [REDACTED] is listed on the portion of AICTE's website entitled "Accredited Institutions." Counsel states that the AICTE is not the only agency in India that determines whether an institution is accredited and submits a list of six other entities besides the AICTE that establish standards of teaching as well as evaluate programs of higher education. Counsel has not stated whether any of these other entities recognizes the [REDACTED] as an accredited institution of higher learning.

In order for a foreign degree to be deemed equivalent to a United States degree, that degree must have been obtained from an accredited institution of higher learning in the country where the degree was earned. In this instance, The All India Council for Technical Education (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 March 26, 2014). 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. Based on a review of the All India Council for Technical Education (AICTE) website,

█ is not an accredited institution in India either now, or at the time that the beneficiary completed his program of study. See <http://www.nba-aicte.ernet.in/nmna.htm> (accessed March 26, 2014). The █ credential will not be considered and the petitioner's motion does not establish that the AAO's previous decisions was based on an incorrect application of law or [USCIS] policy; and that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3).

Neither evaluation of the beneficiary's education submitted by the petitioner assigned any academic value to the █ Advanced Diploma. Each evaluation stated that the beneficiary's Bachelor of Commerce degree was equivalent to a four-year Bachelor of Business Administration degree from an accredited institution of higher education in the United States. Neither stated that the degree was in the Computer Science, Engineering or Math as required by the Form ETA 750.

On motion, the petitioner relies on the beneficiary's three-year bachelor's degree combined with his diploma from █ as being equivalent to a U.S. bachelor's degree. A three-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. See *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

AACRAO has published the *P.I.E.R World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* (1997). We note that the 1997 publication incorporates the first degree and education degree placements set forth in an earlier 1986 publication. The *P.I.E.R World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* at 43. As with EDGE, these publications represent conclusions vetted by a team of experts rather than the opinion of an individual. In the 1997 publication on page 46, it states that the █ title, within the █ system, is primarily a vocational/technical qualification, and that the entrance requirement is a class/Grade XII certificate.

The AAO accessed █ website to determine what type of educational services it provides. See <http://www.niit.com/services/ITEducationforIndividuals/Pages/ComputerCourses.aspx> (accessed March 27, 2014). █ offers a career program (█), an engineering technology program (Edgeineers), which "helps engineering students and engineering graduates get acquainted with high-end technologies and meet requirements across their academic lifecycle;" networking and infrastructure management programs; basic computer programs; and short-term technology programs. *Id.* The website does not indicate that █ requires a college degree in order to admit a student to any of these programs. Further, there is no evidence that the beneficiary's admission to █ was predicated upon the completion of a bachelor's degree program.

As noted above, the beneficiary's degree must be from a college or university. The petitioner has submitted no evidence to establish that █ is a university or college as required by USCIS regulation. As the petitioner has not demonstrated that the beneficiary's postgraduate diploma was issued by a university or college, the beneficiary's █ diploma cannot be considered the equivalent of a U.S. bachelor's degree.

The beneficiary's one-year diploma does not require completion of a two- to three-year college degree for admission. Therefore, even if the [REDACTED] were accredited by the AICTE or another accrediting body in India, when coupled with the beneficiary's three-year bachelor's degree it would still not equate to a single source degree to qualify for the professional classification under Section 203(b)(3)(A)(ii) of the Act. As stated above, both section 203(b)(3)(A)(ii) of the Act and the relevant regulations use the word "degree" in relation to professionals. 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 a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. 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). Therefore, for the reasons stated above, and based on the conclusions of EDGE, the evidence in the record is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in "Computer Science, Engineering, or Math."

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree from an accredited college or university. The petitioner has failed to overcome the conclusions of EDGE with reliable, peer-reviewed information. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

Petitioner's Ability to Pay the Proffered Wage

In determining the petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner has paid the beneficiary the full proffered wage each year from the priority date. If the petitioner has not paid the beneficiary the full proffered wage each year, USCIS will next examine whether the petitioner had sufficient net income or net current assets to pay the difference between the wage paid, if any, and the proffered wage.⁸ If the petitioner's net income or net current assets is not sufficient to demonstrate the petitioner's ability to pay the proffered wage, USCIS may also consider the overall magnitude of the petitioner's business activities. See *Matter of Sonogawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

According to USCIS records, the petitioner has filed I-140 petitions on behalf of many other beneficiaries. Therefore, the petitioner must establish that it has had the continuing ability to pay the combined proffered wages to each beneficiary from the priority date of the instant petition. See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977).

⁸ See *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986); *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983); and *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. filed Nov. 10, 2011).

At issue on motion is whether the petitioner can establish that it had the ability to pay the beneficiary's proffered wage for 2003, 2005 and 2009, in addition to paying the obligated wages to the petitioner's other sponsored workers. On motion, counsel asserts that the petitioner has demonstrated that it paid prorated wages for each of its sponsored workers for 2003. The regulation at 8 C.F.R. § 204.5(g)(2) requires evidence of the ability to pay in the form of "copies of annual reports, federal tax returns, or audited financial statements." Each of these pieces of evidence relate to a petitioner's financial status during the entire year. The petitioner asserts on motion that "one can calculate the employee's monthly wage" from these annual tax documents; however, no evidence was submitted to establish which portion of the beneficiary's wages were paid after the priority date in November 2003, nor was any evidence submitted to break down what portion of the petitioner's income was realized after that priority date. While USCIS will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.

The petitioner must demonstrate its ability to pay the entire amount of the beneficiaries' proffered wages from the year of the priority date onward. The USCIS will not prorate the wages of a petitioner's sponsored workers for any reason in another year; accordingly, the petitioner must establish that it has the ability to pay the full proffered wages of all of its sponsored workers in every year, including the year that the priority date is established. Therefore, the petitioner's claim that it had the ability to pay the prorated wages of all of its sponsored workers for 2003 is without merit. The petitioner has not established that it had the ability to pay the full proffered wages of all of its sponsored workers for 2003. On motion, counsel did not address the petitioner's ability to pay the proffered wages of its sponsored workers for 2005 or 2009.

It is noted that the petitioner submitted on motion a document entitled "Chart 2, List of Active I-140 petitioner (Approved/Pending) filed by [REDACTED]" This document identifies fourteen beneficiaries (including the instant beneficiary) for whom the petitioner was petitioning in 2003. Of these fourteen beneficiaries, only one worker was paid the proffered wage in 2003. The chart identifies seventeen beneficiaries (including the instant beneficiary) for whom the petitioner was petitioning in 2005. Of these seventeen beneficiaries, only two workers were paid the proffered wage in 2005. The chart identifies twenty-six beneficiaries (including the instant beneficiary) for whom the petitioner was petitioning in 2009. Of these twenty-six beneficiaries, only three workers were paid the proffered wage in 2009. Thus, it is also concluded that the petitioner has not established its continuing ability to pay the proffered wages to the beneficiary and the other sponsored workers.

Conclusion

In summary, the petitioner has failed to establish that the beneficiary qualifies for classification as a professional under section 203(b)(3)(A)(ii) of the Act. The petitioner has also failed to establish that it had the ability to pay the wages proffered to its beneficiaries from the priority dates onward.

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, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). The petitioner has not sustained that burden. Accordingly, the motion will be dismissed, and the previous decisions of the director and the AAO will not be disturbed.

ORDER: The motion to reopen is granted; the previous decisions of the AAO are affirmed. The petition remains denied.