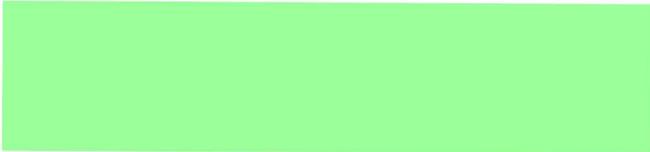




U.S. Citizenship
and Immigration
Services

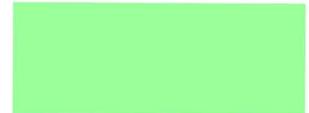
(b)(6)



Date:

JAN 23 2014

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,


Ron Rosenberg

Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (the director), denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a pharmaceutical company. It seeks to permanently employ the beneficiary in the United States as a quality assurance supervisor. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is February 7, 2005. See 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess a U.S. bachelor's degree in chemistry or foreign equivalent as required by the terms of the labor certification.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. 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.

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.² On appeal, counsel submits a brief, copies of AAO cases and copies of documentation already in the record.

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 Form ETA 750 was accepted for processing on February 7, 2005.

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

¹ Section 203(b)(3)(A)(ii) of the Act grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. 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.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 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).

EDUCATION

Grade School: Blank.

High School: Blank.

College: X.

College Degree Required: Master's (or foreign equivalent)

Major Field of Study: Chemistry

TRAINING: None Required.

EXPERIENCE: Three (3) years in the job offered or in the related occupation of quality assurance.

OTHER SPECIAL REQUIREMENTS: 1. 2 years' experience performing quality assurance assessments, including in-process sampling and physical/chemical testing during the manufacturing/packaging of prescription and over-the-counter ("OTC") solid oral dosage ANDA/Non-ANDA drug products. 2. (a) Using pharmacopoeial methods (including chemical and instrumentation) to analyze in process/finished products; (b) performing quality assurance assessments for pharmaceutical products through review of batch records, sampling and testing methods, specifications, standard operating, cleaning and validation procedures and protocols for products; (c) investigation of market complaints, deviations and products failures; (d) handling technical queries from the FDA and customers; (e) qualification of vendors/contractors; and (f) annual product reviews. 3. 1 year's experience supervising quality assurance associates. 4. Experience can be concurrent

In the instant case, the labor certification states that the beneficiary possesses a Bachelor of Science in Chemistry and Biology from [REDACTED] issued in 1994, and a Master of Science in Medical Physiology from [REDACTED] issued in 1998. In support, the petitioner submitted the beneficiary's Bachelor of Science from [REDACTED] and Master of Science – Medical degree in Physiology from Manipal Academy of Higher Education, [REDACTED] with corresponding transcripts.

The record contains an evaluation prepared by [REDACTED] on December 6, 2004. The evaluation states that the beneficiary's bachelor's degree is the equivalent of three years of study at a U.S. institution and that the beneficiary's Master of Science degree is equivalent to a Master of Science degree in biology and chemistry from an accredited institution in the United States. The record contains two evaluations prepared by [REDACTED] on October 1, 2008 and May 6, 2010. These evaluations state that the beneficiary's combined bachelor's degree and master's degree is equivalent to a Master of Science degree in biology and chemistry from an accredited institution in the United States.

United States Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may

give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). 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>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.³

According to EDGE, a three-year Bachelor of Science degree from India is comparable to "three years of university study in the United States." EDGE further discusses a three-year Master of Physiology degree from India as comparable to "a master's degree in the United States."

Therefore, based on the conclusions of EDGE, the evidence in the record below and on appeal is sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. Master's degree. The AAO therefore withdraws the director's finding that the beneficiary holds only a three-year bachelor's degree and a two-year master's degree, which is not considered the equivalent of a U.S. master's degree. However, the beneficiary's degree is in Physiology and not in the required field of Chemistry. Physiology is defined as a science which deals with the ways that living things function, whereas chemistry is defined as science that deals with the composition, structure, and properties of substances and with the transformations that they undergo. See [---

³ 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.](http://www.merriam-</p></div><div data-bbox=)

webster.com/dictionary. As a result, the beneficiary does not qualify for the position based on the stated minimum requirements of the labor certification.

For the reasons discussed above, the beneficiary does not meet the job requirements on the labor certification. Thus, the petition may not be approved.

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). Here, that burden has not been met.

ORDER: The appeal is dismissed.