



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **MAR 06 2014** OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner:
Beneficiary:

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

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 employment-based visa petition was denied by the Director, Nebraska Service Center (director). The director reopened the case on motion and again denied the petition. The subsequent appeal was dismissed by the Administrative Appeals Office (AAO). The matter is now before the AAO on motion to reopen. The motion will be granted. The appeal will be dismissed and the petition will remain denied.

The petitioner describes its business as the manufacture and sale of network data storage products. It seeks to employ the beneficiary permanently in the United States as a business systems analyst. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary satisfied the educational requirements of the labor certification and denied the petition accordingly.

On June 6, 2013, the director granted a motion to reopen its decision and affirmed the denial of the petition. The director's decision concludes that the beneficiary did not possess the minimum qualifications as required by the terms of the labor certification. Specifically, the director found that the beneficiary did not possess a four-year bachelor's degree and does not meet the minimum requirements as stated on the labor certification. The AAO affirmed the director's decision and dismissed the appeal on December 6, 2013.

On motion to reopen, counsel reasserts that by stating that the job required a "Bachelor's degree or equivalent," the petitioner desired to open the job "to the widest possible range of applicants, both with and without single-source Bachelor's-level degrees." Counsel states that this is common practice in advertising job vacancies in the petitioner's field of business and submits copies of job announcements posted by other companies. The motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner is providing new facts with supporting documentation not previously submitted.

In the instant case, the petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, which 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) provides:

(ii) *Other documentation—*

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* 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 individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The beneficiary must 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)(1), (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).

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(1)(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(1)(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.

In evaluating 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 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.

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

- H.4. Education: Bachelor's degree in Business Administration.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: Accounting or a related quantitative field.

- H.8. Alternate combination of education and experience: None.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 84 months as a functional lead or any occupation in which the required experience was gained.
- H.14. Specific skills or other requirements: The position requires a Bachelor's degree or equivalent in Business Administration, Accounting or a related quantitative field and seven years of progressive, post baccalaureate experience with Oracle E-Business Suite 11i. Stated experience must include working as a finance functional lead; procure to pay; finance revenue management; the finance close process; business analysis; order management; inventory management; and Oracle 11i Finance ERP implementation, including Oracle Fixed Assets (FA), Accounts Payable (AP), Accounts Receivable (AR), I procurement, Purchasing (PO), General Ledger (GL), and Financial Statement Generator (FSG). Must pass company's technical review. Will accept any suitable combination of education, training or experience which would qualify an applicant for the position.

Part J of the labor certification states that the beneficiary possesses a Bachelor's degree in accounting from the [REDACTED], completed in 2003.

The record contains a copy of the beneficiary's bachelor of commerce diploma and transcripts from the [REDACTED], issued in 1999. The record contains a copy of the beneficiary's intermediate examination certificate from the [REDACTED], which was passed in November 2001 and his final examination certificate issued by ICAI on January 12, 2003, indicating that the beneficiary passed the final examination. Transcripts indicate that the beneficiary completed the final exam in November 2002.

The record contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] on August 10, 2012. The evaluation states that the beneficiary's bachelor of commerce degree represents the academic equivalent of three years of academic study towards a Bachelor of Science degree in Accounting at an accredited institution in the United States and that his certificate of final examination in [REDACTED] represents the academic equivalent of a Bachelor's degree in accounting from an accredited institution in the United States.

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 petitioner relies on the beneficiary's three-year bachelor's degree combined with his membership in ICAI 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). Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees, work experience, and/or study at a non-academic institution followed by an examination, as obtained by the beneficiary, the result is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional.

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>. 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.¹ 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.²

According to EDGE, a three-year Bachelor of Commerce degree from India is comparable to "three years of university study in the United States."

EDGE further advises that [REDACTED] final examination represents attainment of a level of education comparable to a bachelor's degree in the United States.

¹ 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.

² 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 court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

<http://edge.aacrao.org/country/credential/institute-of-chartered-accountants-of-india-icai-final-exam-and-award-of-association-membership?cid=single> (accessed September 16, 2013).

In response to the AAO's September 27, 2013, request for evidence (RFE), counsel submitted an evaluation of the beneficiary's credentials prepared by [REDACTED]

[REDACTED]
on November 4, 2013. The evaluation states that the beneficiary's bachelor of commerce degree and certificate of final examination in [REDACTED] represents the academic equivalent of a Bachelor's degree in accounting from an accredited institution in the United States. Counsel contends that the beneficiary's associate membership in [REDACTED] is the foreign equivalent of a "single-source" bachelor's degree and provides copies of AAO cases; however, the AAO cases submitted by counsel are non-precedent decisions.³ [REDACTED] associate membership by itself can "reasonably be considered an academic degree" and that "EDGE does not combine credentials when providing equivalency determinations and only looks at the level of academic proficiency ultimately achieved to determine a single-source equivalency" for [REDACTED] associate membership. [REDACTED] acknowledges that the beneficiary's Bachelor of Commerce was taken into consideration in [REDACTED] issuance of associate membership to the beneficiary and thus, the beneficiary's associate membership in [REDACTED] necessarily required a combination of a lesser degree (bachelor of commerce) with studies and examinations under [REDACTED]

Although AACRAO and EDGE confirm that the [REDACTED] final examination is comparable to a U.S. bachelor's degree, ICAI is not an academic institution that can confer an actual degree with an official college or university record. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that ICAI membership was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree). While no degree is required for the skilled worker classification, the regulation at 8 C.F.R. § 204.5(I)(3)(B) provides that a petition for an alien in this classification must be accompanied by evidence that the beneficiary "meets the education, training or experience, and any other requirements of the individual labor certification." Thus, the singular degree requirement is not applicable to skilled workers and the regulation governing skilled workers only requires that the beneficiary meet the requirements of the labor certification. As noted previously, the certified ETA Form 9089 requires a bachelor's degree in Accounting, Information Systems, Science or Engineering. The record contains documentary evidence showing that the beneficiary in the instant petition passed the [REDACTED] final exam and was awarded a certificate of membership as an associate of the [REDACTED]. However, the AAO finds that the petitioner did not state in the labor certification that it would accept membership in [REDACTED] or anything less than a 4-year bachelor's degree as a foreign educational equivalent to a U.S. bachelor's degree in Accounting, Information Systems, Science or Engineering.

³ While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The labor certification does not permit a lesser degree, a combination of lesser degrees, and/or a quantifiable amount of work experience, such as that possessed by the beneficiary.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 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.

Counsel provided copies of the internet and newspaper advertisements and other recruitment, however, they all fail to advise the DOL or otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. Specifically, the newspaper and internet advertisements do not include a description of the minimum requirements outside the minimum requirements stated on the labor certification: "Requires Bachelor's degree or equivalent in Business Admin. Accounting or related quantitative field." The internet and newspaper advertisement, as well as the posting notice submitted by the petitioner, do not advise that the educational requirements for the job may be met through a combination of lesser degrees or other defined equivalency. It is noted that of seventeen resumes it received in response to

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 Anna C. Hall, 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 Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (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 Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (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.

its recruitment efforts, sixteen possessed at least a U.S. bachelor's degree. The petitioner's notes reveal that the lone applicant who did not possess a U.S. bachelor's degree was rejected, in part, because the applicant "[d]oes not have a Bachelor's degree or equivalent in Business Administration, Accounting or a related quantitative field." The petitioner's notes also specify that that applicant did not have sufficient "post baccalaureate" work experience, implying that applicants for the position were expected to have obtained a bachelor's degree prior to gaining the requisite work experience. As a result of the petitioner's failure to define what it would have accepted as equivalent to a bachelor's degree, U.S. workers may have been dissuaded from applying for the position.

Counsel asserts that the recruitment the petitioner performed is standard for the industry. In response to the DOL audit request, the petitioner indicated that a bachelor's in business administration is a business necessity. The petitioner also stated that, in reviewing open positions "from companies across multiple industries... [it is] a common requirement for candidates to have a bachelor's plus seven years of experience." The record supports the petitioner's requirement in the labor certification that a bachelor's degree, or a foreign equivalent degree, is required for the advertised position. Yet the petitioner may not advertise for a narrower group of people, and at the same time, accept a candidate who does not meet the minimum requirements of the offered position as advertised to the public.⁶

Counsel asserts that the petitioner used the term "equivalent" broadly "with the intention of inviting applications for consideration from individuals who might not hold a four-year U.S. Bachelor's degree." However, counsel's assertion is not supported by any evidence. 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).

Counsel also asserts that the petitioner intentionally did not list [redacted] membership as an acceptable alternative to a U.S. bachelor's degree because "this is not a widely held qualification that one could expect to find in the U.S. labor market." However, the petitioner listed on the ETA Form 9089 at section H.8 that it would not accept any alternative combination of education and experience in place of a bachelor's degree or foreign equivalent. The ETA Form 9089 and the recruitment could have identified, even if broadly, that an alternative to a four-year degree was acceptable; neither the ETA Form 9089 nor the recruitment defines the acceptable equivalent.

Thus, the alien does not qualify as a skilled worker as he does not meet the terms of the labor certification as explicitly expressed or as extrapolated from the evidence of the petitioner's intent about those requirements during the labor certification process.

⁶ The regulation at 20 C.F.R. § 656.17(f) provides that the advertisement for the proffered position must not contain any job requirements or duties which exceed the job requirements or duties listed on the ETA Form 9089. Had the petitioner meant to open the job up to those without a bachelor's degree, the advertisement would have had to reflect the minimum requirements of the position as less than a bachelor's degree, or a foreign equivalent degree.

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. The petition remains denied.