



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: OFFICE: NEBRASKA SERVICE CENTER
OCT 28 2014

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:
SELF-REPRESENTED

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, 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 software development and computer consulting business. It seeks to permanently employ the beneficiary in the United States as a programmer analyst. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner marked box "1.e" at Part 2, indicating that it seeks to classify the beneficiary as a professional 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).

The petition is accompanied by an ETA Form 9089, Application for Permanent 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 8, 2013. See 8 C.F.R. § 204.5(d).

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's in Computer Science.
- H.5. Training: None required.
- H.6. Experience in the job offered: 12 months.
- H.7. Alternate field of study: CIS, MIS, Electronics, Math, any Engineering, Business Administration.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 12 months as team lead, staff application programmer.
- H.14. Specific skills or other requirements: Bachelor's in Comp. Sci., or CIS or MIS or Electronics or Math or any Engineering or Business Administration. Employer is a software development and computer consulting firm. Relocation to various client sites throughout the U.S. for periods of 6 mos to 2 yrs required.

Part J of the labor certification states that the beneficiary possesses a bachelor's degree in electronics and communication from [REDACTED] formerly [REDACTED] India, completed in 1996.

Regarding the beneficiary's education, the record contains a copy of the beneficiary's certificate issued by [REDACTED] on January 21, 1997, indicating that the beneficiary was elected as an Associate Member of [REDACTED] by virtue of having passed the [REDACTED] Examination in June 1996; the beneficiary's [REDACTED] Examination Marks Card dated January 7, 1997; a transcript certificate dated November 20, 2013 indicating that the beneficiary was elected as an Associate Member of [REDACTED] by virtue of having passed Sections A and B of the [REDACTED] Examination in June 1996; the beneficiary's certificate of diploma and transcripts issued by the State Board of Technical Education and Training in India indicating that the

beneficiary completed a 3-year diploma course of study in electronics and communication engineering at [REDACTED] in India; and the beneficiary's secondary school certificate and transcripts.

The director's decision denying the petition concludes that the beneficiary does not possess a U.S. bachelor's degree or foreign equivalent degree as required by the terms of the labor certification and for classification as a professional.

On appeal, the petitioner asserts that the beneficiary possesses the equivalent of a U.S. bachelor's degree and that the beneficiary is qualified for the offered position.

The record shows that the appeal is properly filed 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). We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

Beneficiary's Qualifications

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

¹ 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).

It is left to USCIS to determine whether the offered position and the beneficiary qualify for the requested preference classification, and whether the beneficiary satisfies the minimum requirements of the offered position as set forth on the labor certification.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).² *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would

² Based on revisions to the Act, the current citation is section 212(a)(5)(A).

adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the duties of the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and beneficiary are eligible for the requested employment-based immigrant visa classification.

In the instant case, the petitioner requests classification of the beneficiary as a professional. 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(l)(2).

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

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).

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 at least a U.S. bachelor’s degree or a foreign equivalent degree from a college or university; and the job offer portion of the labor certification requires at least a bachelor’s degree or a foreign equivalent degree.

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)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

At issue in this case is whether the beneficiary possesses a U.S. bachelor’s degree or a foreign equivalent degree, and whether the beneficiary meets the requirements of the labor certification.

The Beneficiary Must Possess a U.S. Bachelor’s Degree or Foreign Equivalent Degree

As is noted above, in order to be classified as a professional, the beneficiary must possess at least a U.S. bachelor’s degree or a foreign equivalent degree from a college or university. 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 petitioner relies on the beneficiary’s Associate Membership in [REDACTED] as being equivalent to a U.S. bachelor’s degree. Associate Membership in [REDACTED] is based upon sequential examinations, preparatory courses and employment experience. An Associate Membership is awarded to students who have passed Sections A and B of the [REDACTED] Examination and who have the requisite employment experience.³

We have 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 “non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries.” See <http://www4.aacrao.org/centennial/about.htm>. 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.⁴

³ Leo J. Sweeney & Valerie Woolston, *A P.I.E.R. Workshop Report on South Asia: The Admission and Placement of Students From Bangladesh, India, Pakistan and Sri Lanka* (1986).

⁴ 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

According to EDGE, the beneficiary's diploma in electronics and communication engineering from [REDACTED] in India "represents attainment of a level of education comparable to up to one year of university study in the United States. Credit may be awarded on a course-by-course basis." Further, EDGE states that the beneficiary's Associate Membership in [REDACTED] "represents attainment of a level of education comparable to a bachelors degree in the United States." The director noted the EDGE results in his decision and stated that while [REDACTED] may offer courses and examinations, there is no evidence that [REDACTED] is a college or university or that Associate Membership, which is based on a combination of practical experience and examinations, is a "degree." Therefore, the director determined that the beneficiary has not received a baccalaureate degree from a college or university as required by both the terms of the labor certification and the requirements of the professional visa category.

Further, according to EDGE, the system of education in India consists of three streams: (i) the *school stream*; (ii) the *university stream* (including college); and (iii) the *non-university stream*. <http://edge.aacrao.org/country/overview/india-overview>. The *school stream* consists of pre-primary, primary and secondary education. The *university stream* is provided by universities and a network of colleges that are established by state and federal acts.⁵ Non-university education in the *non-university stream*, both in traditional and professional subjects, is provided through distance education, correspondence courses, technical institutes, polytechnics, vocational training institutes, specialized professional training institutions and by professional societies and institutions. *Id.* EDGE clearly establishes the difference between colleges and universities in India (in the *university stream*), and professional associations such as [REDACTED] in India (in the *non-university stream*). [REDACTED] is not a college or university in India.

The record contains an evaluation of the beneficiary's educational credentials prepared by [REDACTED] on June 4, 2004. It states that based on:

the reputations of the State Board of [REDACTED] and [REDACTED] the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, it is the judgment of The [REDACTED] that [the beneficiary] attained the equivalent of

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.

⁵ There are approximately 682 recognized universities currently operating in India, including central universities, state universities, deemed universities and "private universities." [http://www.\[REDACTED\]](http://www.[REDACTED]) (accessed September 8, 2014). The [REDACTED] oversees standards of teaching, examinations and research in Indian universities. The [REDACTED] is also responsible for attending to financial needs of universities and colleges by allocating and disbursing grants. See <http://edge.aacrao.org/country/overview/india-overview> (accessed September 8, 2014). Neither [REDACTED] is listed as a recognized university in India on the UGC website. [http://www.\[REDACTED\].pdf](http://www.[REDACTED].pdf) (accessed September 8, 2014).

a Bachelor of Science Degree in Electronic Engineering from an accredited college or university in the United States.

Mr. [REDACTED] further states that [REDACTED] “is a professional industry association designed to provide leadership, assistance, and education to individuals engaged in the field of engineering in India.” While he asserts that [REDACTED] offers four-year programs comparable to bachelor’s programs at universities in India, he provides no evidence to establish that [REDACTED] is a college or university that can confer a degree.

Further, the evaluation relies on the beneficiary’s diploma in electronics and communication engineering combined with his Associate Membership in [REDACTED] as being equivalent to a U.S. bachelor’s degree. However, where the analysis of the beneficiary’s credentials relies on a combination of lesser diplomas, work experience, certificates and/or professional certifications, 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 record also contains an additional evaluation of the beneficiary’s educational credentials prepared by [REDACTED] on August 1, 2005. It states that on the:

basis of the credibility of [REDACTED], and the hours of academic coursework, it is the judgment of [REDACTED] that [the beneficiary] has attained the equivalent of a Bachelor of Science degree in Electronics Engineering from an accredited institution of higher education in the United States.

Mr. [REDACTED] refers to [REDACTED] as a “University,” but he provides no evidence to establish that [REDACTED] is a college or university that can confer a degree.⁶ Further, the evaluation relies on the beneficiary’s diploma in electronics and communication engineering combined with his Associate Membership in [REDACTED] as being equivalent to a U.S. bachelor’s degree. However, where the analysis of the beneficiary’s credentials relies on a combination of lesser diplomas, work experience, certificates and/or professional certifications, 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.

In response to the director’s Request for Evidence (RFE) dated October 5, 2013, the petitioner submitted an evaluation of the beneficiary’s educational credentials prepared by [REDACTED] on October 27, 2013. The evaluation states that the beneficiary has completed an “accredited Bachelor Degree in Electronics and Telecommunication Engineering program from [REDACTED] which is of comparable standard to the BS Degree in Electronics Engineering

⁶ Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Independent sources indicate [REDACTED] is not a university. *Supra* n. 5.

from ABET accredited Universities in USA.” However, the evaluation by [REDACTED] does not establish that [REDACTED] is a college or university that can confer a degree.

The evaluation indicates that [REDACTED] is a recognized “Professional Institution” by the Delhi Government; that it is a “Recognized Institution” in Delhi; that it is one of the “National Apex Professional body of Electronics and Telecommunication, Computer and IT Professionals within India;” and that passage of Sections A and B of the [REDACTED] examination “has been listed under accredited Bachelor Degree in Engineering under technical & professional qualifications recognized by Government of India.” The evaluation contains Annexure A to a list of “Professional Courses and Technical Training Facilities Available in Delhi.” The evaluation states that on “Annexure A, [REDACTED] has been listed as a [REDACTED] territory Delhi conducting Bachelor level degree in Engineering program of 4 years duration.” However, the document does not indicate that [REDACTED] is authorized to confer a bachelor’s degree in engineering. Instead, it provides the basic requirements for admission into [REDACTED] and the duration of the courses offered. Further, while additional correspondence attached to the evaluation indicates that the Indian government recognizes Associate Membership in [REDACTED] as equivalent to a bachelor’s degree for purposes of recruitment to government employment, the correspondence does not establish that [REDACTED] is a college or university that can confer a degree.

The evaluation by [REDACTED] also states that [REDACTED] is a recognized [REDACTED] in India. However, the petitioner has not established how [REDACTED]’s recognition as a [REDACTED] in India evidences that it is a college or university that can confer a degree.

Further, the evaluation states that the [REDACTED] degree program “meets the US standard of BS Degree from ABET Accredited universities who have 120 credits as [the beneficiary] has achieved 120 credits in his engineering degree program;” and that the [REDACTED] “Degree in Engineering at Bachelor level enjoys International recognition in the United Kingdom.” However, the beneficiary’s Examination Marks Card from [REDACTED] does not show how many credits he was awarded. Instead, it only shows the subjects, years of passing and grades on Sections A and B of the [REDACTED] Examination. Further, the fact that [REDACTED] enjoys international recognition in the United Kingdom does not establish that it is a college or university that can confer a degree as required by the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C).

USCIS uses an evaluation by a credentials evaluation organization of a person’s foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm’r 1988).

As explained above, in order to be classified as a professional, the beneficiary must possess at least a U.S. bachelor’s degree or a foreign equivalent degree from a college or university. While EDGE concludes that Associate Membership in [REDACTED] is comparable to a bachelor’s degree in the United States, it is not a degree from a college or university. [REDACTED] is not a college or university that can

confer a degree.⁷ Therefore, the beneficiary does not possess a “foreign equivalent degree” within the meaning of 8 C.F.R. § 204.5(l)(3)(ii)(C).

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 a college or university. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

The Beneficiary Must Meet the Minimum Requirements of the Offered Position

The beneficiary must also meet all of the minimum requirements of the offered position as set forth on the labor certification by the priority date. In evaluating the beneficiary’s qualifications, USCIS must look to 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).

The labor certification requires a U.S. bachelor’s degree in Computer Science, CIS, MIS, Electronics, Math, Engineering, or Business Administration, or a foreign equivalent degree.⁸ It is noted that, if the labor certification did not require at least a U.S. bachelor’s degree or a foreign equivalent degree, the petition could not be approved for the visa category selected in this filing. *See* 8 C.F.R. § 204.5(l)(3)(i) (the labor certification underlying a petition for a professional must require at least a U.S. bachelor’s degree or a foreign equivalent degree). However, the beneficiary must also meet the terms of the approved labor certification.

As is discussed above, the beneficiary possesses a diploma in electronics and communication engineering from [REDACTED] in India. According to EDGE, this education is comparable to up to one year of university study in the United States. Further, the beneficiary was elected as an Associate Member of [REDACTED] by virtue of having passed Sections A and B of the [REDACTED] Examination in June 1996. However, [REDACTED] is not a college or university that can confer a degree. While EDGE states that Associate Membership in [REDACTED] is comparable to a bachelor’s degree in the United States, it is not a degree from a college or university and is not a “foreign equivalent degree” within the meaning of 8 C.F.R. § 204.5(l)(3)(ii)(C).

Further, the ETA Form 9089 does not provide that the minimum educational requirement of a bachelor’s degree in Computer Science, CIS, MIS, Electronics, Math, Engineering, or Business Administration might be met through a combination of a diploma in electronics and communication

⁷ *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Or. Nov. 30, 2006) (finding that USCIS was justified in concluding that [REDACTED] membership was not a college or university “degree” for purposes of classification as a member of the professions holding an advanced degree).

⁸ The record contains evidence that the beneficiary has the work experience required by the terms of the labor certification.

engineering, work experience and Associate Membership in [REDACTED].

Thus, the beneficiary does not possess a U.S. bachelor's degree or a foreign equivalent degree. Therefore, the petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

In summary, the petitioner has failed to establish that the beneficiary possessed a U.S. bachelor's degree or a foreign equivalent degree from a college or university. The petitioner also failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

Ability to Pay the Proffered Wage

Beyond the decision of the director,¹⁰ the petitioner has also failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence as the record lacks evidence in conformance with the regulation. See 8 C.F.R. § 204.5(g)(2). The proffered wage is \$77,376.00 per year. The regulation at 8 C.F.R. § 204.5(g)(2) requires annual reports, federal tax returns, or audited financial statements as evidence of a petitioner's ability to pay the proffered wage. That regulation further provides: "In a case where the prospective United States employer employs 100 or more workers, the director *may* accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage." (Emphasis added.)

The petitioner submitted a letter dated September 13, 2013 from [REDACTED] Vice President, stating that the petitioner "employs 800 employees and has annual revenues of approximately \$135 million."¹¹ However, the petitioner has not established that [REDACTED] is a financial officer of the company.¹² Therefore, it is not clear that the letter from [REDACTED] can be accepted as evidence of the petitioner's ability to pay the proffered wage because the petitioner has not established that [REDACTED] is a financial officer of the company. The record of proceeding accordingly does not contain the regulatory required evidence

⁹ Part H.8. of the labor certification states that an alternate combination of education and experience is not accepted.

¹⁰ We may deny an application or petition that fails to comply with the technical requirements of the law even if the Service Center does not identify all of the grounds for denial in the initial decision. 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); see also *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

¹¹ The ETA Form 9089, filed on February 8, 2013, states that the petitioner has 675 employees.

¹² The petitioner's website indicates that [REDACTED] is a Vice President of Human Resources. [http://www.\[REDACTED\]](http://www.[REDACTED]) (accessed September 8, 2014). The website also lists the names of the petitioner's other leaders, including a Director of Finance and a Vice President of Financial Services.

of the petitioner's ability to pay the proffered wage.¹³ Pursuant to the regulation at 8 C.F.R. § 204.5(g)(2), the petitioner did not submit annual reports, federal tax returns, or audited financial statements establishing that it had the continuing ability to pay the proffered wage as of the February 8, 2013 priority date. Without the regulatory required evidence, we are unable to accurately assess the petitioner's ability to pay the proffered wage. Therefore, the petitioner has failed to establish its ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

Further, we note that USCIS records indicate that the petitioner annually filed over two hundred Form I-140 petitions and Form I-129 nonimmigrant petitions with USCIS since the priority date. In circumstances involving multiple beneficiaries, had the petitioner provided the regulatory required evidence of its ability to pay the instant beneficiary's proffered wage, we would take into account the totality of the petitioner's circumstances in assessing its ability to pay all of the beneficiaries' proffered wages.¹⁴

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. 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.

¹³ While we decline to accept the letter as evidence of the petitioner's ability to pay the proffered wage, we will examine the other financial evidence provided. The record contains an undated "Company Profile" for the petitioner, but it is not an annual report. On page one, it states that the petitioner has "2,500 highly qualified and experienced professionals." On page three, it states that it has "4000+ employees." The "Company Profile" does not contain audited financial information for the petitioner and does not indicate that the employee data relates to 2013, the year of the priority date. The record also contains an excerpt dated December 26, 2011 from [REDACTED] indicating that the petitioner had revenues in 2009 of \$111,000,000; revenues in 2010 of \$113,000,000; that it employed 225 full-time local employees in January 2011, and that it employed 4,200 worldwide employees in January 2011. The record also contains an excerpt dated December 31, 2012 from [REDACTED] indicating that the petitioner had revenues in 2011 of \$116,000,000; that it employed 180 full-time local employees in January 2012; and that it employed 4,400 worldwide employees in January 2012. The excerpts do not indicate that they contain audited financial information and the data does not include financial information for 2013, the year of the priority date. Based on the various numbers of employees and figures cited, the revenue attributable to the petitioner's U.S. company, Federal Employer Identification number [REDACTED] is unclear.

¹⁴ The petitioner must establish that its job offers to each beneficiary are realistic, and that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg'l Comm'r 1977) (petitioner must establish ability to pay as of the priority date). See also 8 C.F.R. § 204.5(g)(2).