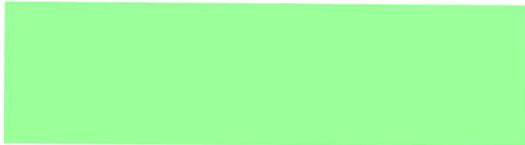


(b)(6)



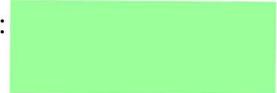
U.S. Citizenship
and Immigration
Services



DATE: **OCT 31 2014**

OFFICE: TEXAS SERVICE CENTER

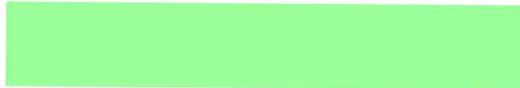
FILE:



IN RE:

Petitioner:

Beneficiary:



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

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 petition was denied by the Director, Texas Service Center. The petitioner appealed the denial to the Administrative Appeals Office (AAO), and, on July 3, 2014, we dismissed the petitioner's appeal. The matter is now before us on petitioner's motion to reconsider our decision to dismiss the appeal. We will dismiss the motion.

The petitioner describes itself as a rubber products manufacturing business. It seeks to permanently employ the beneficiary in the United States as a staff chemist. On the Form I-140, Immigrant Petition for Alien Worker,¹ the petitioner selected box "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 requirements for the proffered job are set forth in the labor certification:

- H.4. Education: Bachelor's.
- H.4B Major Field of Study: Chemistry or Equivalent
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.11. Job duties: Perform following qualitative and quantitative chemical analytical tests: specific gravity testing, hardness testing shore A, tensile strength, elongation, tear strength, brittle point, viscosity, silicone working temperature range, polymer analysis, composition for molding and extrusion, formula reconstruction.
- H.14. Specific skills or other requirements: Requires BS in Chemistry or equivalent, plus 2 yrs of experience in related field. Will accept foreign equivalent degree, 3-year foreign degree, or the equivalent combination of education and experience; Experience as Internal Auditor required; Certificate in Environmental Health, Safety Mgmt. required.

Part J of the labor certification states that the beneficiary's highest level of education related to the offered position is a Bachelor's in Chemistry issued by the [REDACTED] in 1994. Copies of the beneficiary's diploma and transcripts from [REDACTED] indicate that he completed a three-year course of study prior to receiving a Bachelor of Science in Chemistry in 1994.

The director denied the petition on January 2, 2014 following a review of the petitioner's response to his Request for Evidence (RFE), which had solicited additional clarification of the terms of the ETA Form 9089 and additional evidence pertinent to the beneficiary's experience and the petitioner's ability to pay the proffered wage. The director denied the petition on the grounds that the ETA Form 9089

¹ The Form I-140 was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification). The priority date of the petition, which is the first date that the DOL accepted the labor certification, is November 22, 2011. See 8 C.F.R. § 204.5(d).

does not require a minimum of a baccalaureate degree and that the petitioner had not established that the beneficiary had the required experience.

The petitioner, through counsel filed an appeal of the director's decision. Counsel asserts that the director focused on the bachelor's degree requirement of H.4 of the ETA Form 9089 but failed to recognize that the petitioner intended that the H.14 alternate requirements would be considered as being equivalent to a baccalaureate degree. Counsel also asserts that the evidence shows that the beneficiary has experience as an internal auditor based on the completion of three auditor training programs and an appointment as an "internal auditor."

On July 3, 2014, we dismissed the petitioner's appeal. In our decision, we made the following determinations:

1. We discussed the role of the United States Citizenship and Immigration Services (USCIS) and the DOL in the immigrant visa process in that the DOL determines whether there are sufficient U.S. workers available to fill the job and whether the employment of an alien will adversely affect the wages and working conditions of U.S. workers similarly employed. USCIS determines whether the offered position and the beneficiary qualify for the requested visa classification and whether the beneficiary meets the minimum requirements of the offered position as described on the labor certification.
2. 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), which is awarded to qualified immigrants who hold baccalaureate degrees and are members of the professions. The petition must establish that the job is statutorily defined as a profession pursuant to section 101(a)(32) of the Act (which does not include a staff chemist), or that the job requires a bachelor's degree as a minimum for entry. The job offer portion of the labor certification underlying a petition for a professional visa classification "must demonstrate that the job requires the minimum of a baccalaureate degree. 8 C.F.R. § 204.5(l)(3)(i). Further, the beneficiary must possess at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university. Evidence of a U.S. baccalaureate degree or a foreign equivalent 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. 8 C.F.R. § 204.5(l)(3)(ii)(C).
3. Since H.14 of the labor certification amends the bachelor's degree requirement expressed in H.4 to include acceptance of a "3-year foreign degree, or the equivalent combination of education and experience," the credentials permitted are less than a four-year bachelor's degree² represented by an official college or university record and do not support a visa classification for a professional.

² It is noted that 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). The decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006) also supports our decision. In that case, the labor certification specified an educational requirement of four years of college and a "B.S. or foreign equivalent." The district court determined that "B.S. or foreign equivalent" relates solely to the alien's educational background,

4. Further, the beneficiary does not possess a single four-year U.S. baccalaureate degree or an equivalent foreign degree. The credentials evaluation reaches a U.S. bachelor's equivalency only by combining the beneficiary's work experience with his three-year Bachelor's degree from [REDACTED]. The AACRAO EDGE information also indicated that his three-year Indian Bachelor of Science degree is the U.S. equivalent of three years of undergraduate study.³
5. After reviewing the evidence, we also concluded that the petitioner had not established that the beneficiary met the requirements of the labor certification in that no persuasive documentation was submitted to establish that the beneficiary possessed the required internal auditor experience or the required certificate in Environmental, Health, Safety Mgmt. set forth on Part H.14 of the ETA Form 9089. We noted that the petitioner fails to address the director's conclusions that the internal circulars submitted were from an unidentified EHS Department and failed to demonstrate that although the beneficiary was selected for training and was appointed as an internal auditor, the record failed to establish that he served as internal auditor. We further observed that, although the record indicates that the beneficiary possessed 24 months of experience as a chemist, the record failed to establish that he acquired the skills included in the description of the job duties of the proffered job as set forth in Part H.11 of the ETA Form 9089.

The petitioner, through counsel, has filed a motion to reconsider our dismissal of the appeal. 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. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

precluding consideration of the alien's combined education and work experience. *Snaphnames.com, Inc.* at *11-13. The court found that in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly determined 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)(upholding USCIS interpretation that the term "bachelor's or equivalent" on the labor certification necessitated a single four-year degree).

³ According to its website, www.aacrao.org, 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." <http://www.aacrao.org/About-AACRAO.aspx> (accessed *). Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (accessed October 31, 2014).

USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies. 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.

On motion, counsel reiterates that the petitioner's intention was to define a bachelor's equivalency in H.14 of the ETA Form 9089 to include a 3-year bachelor's degree plus experience. Counsel asserts that DOL accepted this definition as well as the documentation that established the beneficiary's experience and certificate in environmental, safety management.

Counsel is not persuasive. We fully addressed in our dismissal the roles that DOL and USCIS have in the immigrant process. It is the responsibility of USCIS, not DOL to decide whether the beneficiary meets the requirements of the labor certification and whether the petition is eligible for professional visa classification. As set forth above, the ETA Form 9089 attempts to redefine, contrary to the Act and regulation, what the minimum baccalaureate degree requirements are for a petition seeking a visa classification of a professional. While a petitioner's equivalency to the minimum baccalaureate degree may be considered in the skilled worker classification, the ETA Form 9089, as set forth, does not support a visa petition for a professional because it does not require at the minimum, 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 possessed a degree that would allow him to be classified as a professional, or that he acquired the experience with the skills detailed in the job duties for the offered job. The motion for reconsideration does not present pertinent precedent decisions to establish that our previous decision was based on an incorrect application of law or Service policy.

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motions, the movant has not met that burden. The motion will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. The petitioner has not met that burden. Section 291 of the Act, 8 U.S.C. § 1361. Accordingly, the motion will be dismissed, the proceedings will not be reconsidered, and the previous decision of the director and the AAO will not be disturbed.

ORDER: The motion to reconsider is dismissed.