



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF K-, LLP

DATE: DEC. 30, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, an audit, tax and advisory services business, seeks to employ the Beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). The Director, Texas Service Center denied the petition and dismissed the Petitioner's subsequent motion to reconsider. The matter is now before us on appeal. The Director's decisions will be withdrawn. The matter will be remanded to the Director for further review.

The Form I-140 petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which has been certified by the U.S. Department of Labor (DOL). The priority date of the visa petition is February 11, 2014, which is the date that DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d). The Petitioner checked box 1.f. in Part 2. of the visa petition, indicating that it seeks to classify the Beneficiary as a skilled worker under section 203(b)(3)(A)(i) of the Act.

As set forth in the Director's decisions of January 8, 2015, and April 13, 2015, the issue on appeal is whether the Petitioner has demonstrated that the Beneficiary is qualified for the offered position.

The Director denied the visa petition based on his determination that the record did not establish that the Beneficiary met the requirements of the offered position of Manager, as set forth in the labor certification. He found that while the Petitioner had filed the petition for a skilled worker, a classification requiring only two years of training or experience, it was still required to demonstrate that the Beneficiary met the requirement for the advanced degree specified in the labor certification.

On appeal, the Petitioner contends that the fact that its requirements for the offered position in the labor certification exceed those for a skilled worker under the regulation at 8 C.F.R. § 204.5(1)(2) should not subject it to heightened evidentiary requirements. It further asserts that the Beneficiary does meet the educational requirements of the labor certification and that the record contains sufficient evidence to establish this claim.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). An application or petition that fails to comply with the technical requirements of the law may be denied even if the director does not identify all of the grounds for denial in the initial decision.

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See *Spencer Enterprises, Inc. v. United States*, 229 F.Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 D.3d 683 (9th Cir. 2003); see also *Soltane v. DOJ*, at 145. We consider all pertinent evidence in the record, including new evidence properly submitted on appeal. The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulation by 8 C.F.R. § 103.2(a)(1).

As indicated above, the Petitioner filed the visa petition seeking classification of the Beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act. The regulation at 8 C.F.R. § 204.5(l)(2) provides the following definition of skilled worker:

Skilled worker means an alien who is capable, at the time of petitioning for this classification of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision.

The Director, however, found that the labor certification required the Beneficiary to hold an advanced degree, which is defined at 8 C.F.R. § 204.5(k)(2) as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree

Concluding that the evidence of record did not establish that the Beneficiary held the required degree, the Director denied the petition on January 8, 2015 and, for this same reason, dismissed the Petitioner's motion to reconsider on April 13, 2015.

Although the Director noted that the record contained academic transcripts relating to the Beneficiary's Master of Business Education issued by the [REDACTED] in India and his Bachelor of Business Administration from [REDACTED], he found neither the [REDACTED] nor [REDACTED] to be accredited academic institutions and, therefore, that the Beneficiary's degrees did not satisfy the educational requirements of the labor certification. The Director also acknowledged the Petitioner's statement in Part H.14. of the labor certification regarding its willingness to accept any combination of degrees, diplomas or professional credentials determined to be equivalent to a single degree by a qualified evaluation service, but found that this language did not negate the specific degree requirements set forth in the labor certification and that the Beneficiary's employment experience could not serve as a substitute for an academic degree.

On appeal, the Petitioner contends that the Director erred in denying the visa petition. It asserts that it filed the petition for a skilled worker and that U.S. Citizenship and Immigration Services (USCIS)

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has denied the petition because it failed to submit evidence required for a professional, which is the wrong evidentiary standard to apply to the petition. The Petitioner also claims that USCIS has erred in focusing on the issue of [REDACTED] accreditation since it is not relying on the Beneficiary's degrees from this institution to satisfy the terms of the labor certification.

The Petitioner further asserts that USCIS has ignored its minimum requirements for the offered position, which reflect that it will accept any combination of degrees, diplomas, or professional credentials that a qualified evaluation service determines to be equivalent to a single baccalaureate degree. It contends that it has submitted such an evaluation for the record and that this report proves that the Beneficiary holds the equivalent of a Bachelor of Science degree in Computer Information Systems based on his employment and training history. It further maintains that USCIS has erred in finding that work experience may not be used to establish a degree equivalency and has imposed a degree requirement where none exists. Moreover, the Petitioner asserts that the denial of the petition ignores the binding federal precedent set by *Grace Korean United Methodist Church v. Michael Chertoff* (*Grace Korean United Methodist Church*), 437 F. Supp. 2d 1174 (D. Or. 2005).

On appeal, the Petitioner submits the following evidence in support of the visa petition: a summary of Q&As from the AILA Liaison Committee Meeting at the Nebraska Service Center (NSC), held April 12, 2007; a February 2, 2015, printout of OFLC (Office of Foreign Labor Certification) Frequently Asked Questions and Answers; a copy of the decision in *Grace Korean United Methodist Church*; a January 29, 2013, evaluation of the Beneficiary's work experience prepared by Professor [REDACTED] copies of the Beneficiary's transcripts for his Bachelor of Business Administration degree from [REDACTED] (California and Utah); copies of the Beneficiary's transcripts for his Master of Business Administration, issued on behalf of [REDACTED] by the [REDACTED] an examinations conducting organization in [REDACTED] India; copies of the Beneficiary's "O" level examination results; copies of certificates reflecting the Beneficiary's completion of several computer training courses; a copy of the Beneficiary's resumé; an October 22, 2014, statement from the Petitioner listing the Beneficiary's current job duties and hours of employment; and statements from the Beneficiary's prior employers, which report his periods of employment and experience.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). We must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* 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. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). Our interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. We cannot and should not look beyond the plain language of the labor certification that DOL has formally issued.

I. MINIMUM REQUIREMENTS FOR OFFERED POSITION

In the present matter, the underlying labor certification establishes the following requirements for the offered position:

- H.4. Education: Bachelor's.
- H.4-B. Major field of study: Related field.
- H.5. Training: None required.
- H.6. Experience in the job offered: Required.
- H.6-A. Length of required experience: 60 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: Accepted.
- H.8-A. Education: Master's.
- H.8-C. Years of experience acceptable: 2 years.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: Accepted.
- H.10-A. Length of experience in alternate occupation: 60 months.
- H.10-B. Title of acceptable alternate occupation: Related occupation.
- H.11. Execute IT and business risk advisory engagements for multinational companies across multiple industries . . . perform current-and-ideal-state assessments, gap and risk analysis, transform business operating models, executive reporting, and provide recommendations on technology and process methodologies. Assess security risks based on Information Technology Infrastructure Library (ITIL) and Control Objectives for Information and related Technology (COBIT) frameworks and standards. Design oversight and implementation review with IT Service Management (ITSM) work flow platforms . . . Analysis of current operations against leading industry practices, followed by process design/reengineering and implementation in at least two processes within the ITIL reference model Engineering of high-availability application, infrastructure platforms Perform infrastructure operations related to physical and virtual computing platforms Design and implementation of management tools and integration with ITSM work flow platforms Utilize knowledge of ITIL, database management systems . . . , operating systems . . . , and capacity management and monitoring tools Assist in managing utilization of resources, staff training, practice administration, preparing budgets, scoping, and engagement setup. Support request[s] for proposal (RFPs), proposal development, and development of intellectual property in the form of white papers, talk books, and methodology collateral.
- H.14. Specific skills or other requirements: Any suitable combination of education, training, or experience is acceptable. Two years of

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experience must include design oversight and implementation review with ITSM work flow platforms ([REDACTED]); analysis of current operations against leading industry practices Employer will accept a single degree or any combination of degrees, diplomas or professional credentials determined to be equivalent by a qualified evaluation service.

Based on the above, the offered position of Manager requires a U.S. Bachelor's degree (or a foreign equivalent degree) in a field of study relating to management (Parts H.4 and 4-B.) and five years of experience as a Manager or in a related occupation (Parts H.6., 6-A., 10., 10-A., and 10-B.), or a Master's degree (or a foreign equivalent degree) in a field of study relating to management (Parts H.4-B and 8-A.) and two years of experience as a Manager or in a related occupation (Parts H.6., 8-C., 10., and 10-B.). However, the labor certification also indicates that the Petitioner's requirement for a Bachelor's or Master's degree may be met through a single degree or a combination of degrees, diplomas or professional credentials determined by a qualified evaluation service to be the equivalent of a degree in the field of management (Part H.14). Accordingly, the degree requirement in the instant labor certification may be met by other than an academic degree awarded by a U.S. university or college, or a foreign equivalent degree. The Beneficiary may satisfy the Petitioner's requirement for a degree on the basis of a degree equivalency.

We note that our conclusion is contrary to the Director's finding that the language in Part H.14. of the labor certification does not negate the Petitioner's requirements for a Bachelor's or Master's degree (or a foreign equivalent degree) found in Parts H.4., 4-B., and 8-A. While we agree that the requirement for a single degree issued by an accredited U.S. college or university (or a foreign equivalent degree) would be fixed in a case where a petitioner sought to classify a beneficiary as a professional under section 203(b)(3)(A)(ii) of the Act or an advanced degree professional under section 203(b)(2) of the Act, the Petitioner in this matter has filed the visa petition for a skilled worker, a classification that may be granted solely on the basis of training or experience. In the absence of a statutory degree requirement, we find the degree equivalency stated in Part H.14. of the labor certification to be sufficient to satisfy the degree requirement set forth in the labor certification under the requested skilled worker classification. Accordingly, we will withdraw the Director's finding that the labor certification requires the Beneficiary to hold a single academic degree awarded by a U.S. university or college, or a foreign equivalent degree and the January 8, 2015, and April 13, 2015 decisions based on this finding.

II. EVIDENCE OF DEGREE EQUIVALENCY

To establish that the Beneficiary holds the necessary degree equivalency, the Petitioner submits the previously noted evaluation prepared by Professor [REDACTED] Florida. [REDACTED] January 29, 2013, report concludes that the Beneficiary's more than 12 years of work experience and training in Computer Information Systems and related areas provide him with "the equivalent of a Bachelor of Science degree in Computer Information Systems from an accredited institution of higher education in the United States."

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To support this conclusion, [REDACTED] reviews the duties performed by the Beneficiary as a Technical Solutions Provider, [REDACTED] from May 2000 to February 2001; an IT Engineer, [REDACTED] from February 2001 to September 2001; a Group IT Manager, [REDACTED] from September 2001 to January 2009; a Systems Engineer, [REDACTED] from February 2009 to April 2010; a Senior Systems Administrator, [REDACTED] from April 2010 to October 2010; a Systems Engineer, [REDACTED] from October 2010 to November 2010; and an IT Advisor for the Petitioner, beginning in November 2010. Using an equivalency ratio of three years of work experience to one year of college training, he finds the preceding experience to establish that the Beneficiary has the equivalent of “not less than four years of Bachelor’s-level academic training.”

Although Part H.14. of the labor certification does not specifically state that that it will accept a degree equivalency based on work experience, the Petitioner contends that its use of the term “professional credentials” in Part H.14. establishes its intent to allow the Beneficiary’s work experience to be used in demonstrating a degree equivalency. It points to the definition of “credential” found in the Merriam-Webster dictionary at <http://www.merriam-webster.com/dictionary/credential.>, “quality, skill or experience that makes a person suited to do a job,” as proof that the Beneficiary’s various jobs should be considered his professional credentials.

While we note the definition of “credential” provided by the Petitioner, we are not persuaded that when used in conjunction with “degrees” and “diplomas,” the term “professional credentials” may be viewed as other than a reference to professional certificates awarded for training or competence. Such a reading is in line with the definition of credential used by DOL’s Employment & Training Administration at <http://wdr.doleta.gov/directives/attach/TEGL15-10a2.pdf>. (accessed October 16, 2015), which states:

Overall description of credential. Within the context of education, workforce development, and employment and training for the labor market, the term *credential* refers to a verification of qualification or competence issued to an individual by a third party with the relevant authority or jurisdiction to issue such credentials (such as an accredited educational institution, an industry-recognized association, or an occupational association or professional society).

The range of different types of credentials includes:

1. Educational diplomas, certificates and degrees;
2. Registered apprenticeship certificates;
3. Occupational licenses (typically awarded by State government agencies);
4. Personnel certifications from industry or professional association; and
5. Other skill certificates for specific skill sets or competencies within one or more industries or occupations (e.g., writing, leadership, etc.)

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Accordingly, we do not find the Petitioner's use of the term "professional credentials" in Part H.14. of the labor certification to definitively allow for an equivalency based on the Beneficiary's employment experience.

We also note that [REDACTED] reaches his equivalency finding by equating three years of work experience to one year of college training, an equivalency ratio that he states is "mandated by United States Citizenship and Immigration Services." However, the equivalency ratio relied upon by [REDACTED] may be used to establish degree equivalencies only in nonimmigrant H-1B (specialty occupation) cases. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As the record does not demonstrate what the Petitioner intended to accept in lieu of the required degree, it does not establish that the Beneficiary has the degree equivalency allowed for by Part H.14. of the labor certification.

Credentials evaluations are used by USCIS as advisory opinions 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).

III. OFLC RESPONSE ON DEGREE REQUIREMENT FOR PROFESSIONAL

As further proof that the Beneficiary may qualify for the offered position based on his employment experience, the Petitioner submits a printout of OFLC (Office of Foreign Labor Certification) Frequently Asked Questions and Answers, which includes DOL's response to the question of whether or not a degree is a requirement for a professional position. The response states:

No, the foreign worker does not need to have a bachelor's or higher degree to qualify. However, if the employer is willing to accept work experience in lieu of a baccalaureate degree, such work experience must be attainable in the U.S. labor market and the employer's willingness to accept work experience in lieu of a degree must apply equally to U.S. applicants and must be stated on the application form.

This response does not, however, establish that the Beneficiary's work experience qualifies him for the offered position in this matter.

While DOL is responsible for certifying the labor certification application in the employment-based immigrant visa process, the determination as to whether an immigrant visa beneficiary may qualify as a professional under section 203(b)(3)(A)(ii) of the Act is made by USCIS. The DOL role in the employment-based immigrant visa 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.

None of the above inquiries assigned to DOL or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

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).¹ *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.

¹ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

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 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:

[T]he 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 DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of a beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if a beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification. Accordingly, DOL's response to the question posed on its website does not establish that the Beneficiary's employment experience qualifies him for the offered position.

IV. DECISION IN GRACE KOREAN UNITED METHODIST CHURCH

On appeal, the Petitioner also contends that in denying the instant Form I-140, the Director ignored federal precedent in *Grace Korean United Methodist*. It asserts that the decision in *Grace Korean* requires USCIS to consider equivalency based on education and experience when considering a beneficiary's eligibility for classification under section 203(b)(3) of the Act as neither statute nor regulation prohibit equivalency based on education and experience for the skilled worker category.

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In *Grace Korean United Methodist Church*, a federal district court held that USCIS “does not have the authority or expertise to impose its strained definition of ‘B.A. or equivalent’ on that term as set forth in the labor certification.” *Id.* at 1179. Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before us, the analysis does not have to be followed as a matter of law. See *Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). Therefore, contrary to the Petitioner’s assertion, we are not bound by the findings of the court in *Grace Korean United Methodist*.

We also note that a judge in the same district subsequently held that the assertion that DOL certification precludes USCIS from considering whether the alien meets the educational requirements specified in the labor certification is wrong. *Snapnames.com, Inc. v. Chertoff (Snapnames.com, Inc.)*, 2006 WL 3491005 *5 (D. Or. Nov. 30, 2006). In *Snapnames.com, Inc.*, the labor certification application specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The alien had a three-year degree and membership in the [REDACTED] that USCIS found did not qualify the beneficiary for either EB-2 or EB-3 classification (due to the specific job requirements on the labor certification). The court upheld USCIS’ determinations on EB-2 and EB-3 as a professional, but reversed it on the EB-3 skilled worker classification.

In reaching its conclusions, the court determined that ‘B.S. or foreign equivalent’ relates solely to the alien’s educational background, precluding consideration of the alien’s combined education and work experience. *Id.* at *11-13. Additionally, the court found that in professional and advanced degree professional cases, where an alien is statutorily required to hold a bachelor’s degree, that USCIS had properly found a single degree or its equivalent to be required. *Id.* at *17, 19. However, it also concluded that the word ‘equivalent’ in the employer’s educational requirements was ambiguous and that in the context of skilled worker petitions (where there was no statutory educational requirement), deference must be given to the employer’s intent. *Id.* at *14. Although, as with *Grace Korean United Methodist*, we are not bound by the decision in *Snapnames.com, Inc.* we, nevertheless, take note of the court’s reasoning with regard to the deference to be paid to a petitioner’s intentions when considering educational equivalencies in skilled worker petitions.

In the present matter, the Director found that the Beneficiary did not hold the single academic degree from an accredited U.S. university of college, or foreign equivalent degree required by the labor certification and denied the visa petition on this basis. As a result, he did not explore the Beneficiary’s eligibility for the offered position based on the degree equivalency stated in Part H.14. of the labor certification or the Petitioner’s intent with regard to the requirements necessary to establish that degree equivalency. Therefore, pursuant to the reasoning in *Snapnames.com, Inc.*, we will remand this matter to the Director for his consideration of the Petitioner’s requirements for the degree equivalency stated in Part H.14. of the labor certification, specifically whether the Petitioner, as it has claimed, intended to allow work experience to be used in demonstrating a degree equivalency.

Prior to reaching his decision, the Director should request evidence from the Petitioner regarding its intent to accept a degree equivalency based on employment experience, as that intent was explicitly

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and specifically expressed during the labor certification process to DOL and to potentially qualified U.S. workers. To establish that U.S. workers were clearly informed of the educational equivalency set forth in section H.14. of the labor certification, the Petitioner should be asked to provide copies of documents it prepared in accordance with DOL regulations at 20 C.F.R. § 656, including a signed recruitment report for the offered position, the prevailing wage determination for the position, all online and print recruitment conducted for the position, the posted notice of the filing of the labor certification, all resumés received in response to recruitment efforts, and copies of any communications with DOL probative of its intent, including correspondence or documents generated in response to an audit.

Additionally, the Director shall request the submission of new evidence (evaluations prepared by qualified evaluations services) establishing the Beneficiary's work experience as the equivalent of the baccalaureate degree in the management-related field required by the labor certification as that equivalency was expressed to potentially qualified workers. As previously discussed, the equivalency ratio relied on by [REDACTED] in his January 29, 2013 evaluation of the Beneficiary's employment history is not specifically defined by the terms of the labor certification. Credentials evaluations are used by USCIS as advisory opinions 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.* at 817.

In visa 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).

ORDER: The decisions of the Director, Texas Service Center, are withdrawn. The matter is remanded to the Director, Texas Service Center for further proceedings consistent with the foregoing opinion and for the entry of a new decision.

Cite as *Matter of K-, LLP*, ID# 15074 (AAO Dec. 30, 2015)