



U.S. Citizenship
and Immigration
Services

(b)(6)



DATE: MAY 01 2015

FILE #: [REDACTED]

PETITION RECEIPT #: [REDACTED]

IN RE:

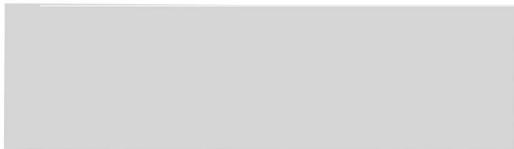
Petitioner:

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:



Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office



DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition, and the petitioner filed an appeal with the Administrative Appeals Office (AAO). On September 4, 2013, we dismissed the petitioner's appeal. The petitioner filed a motion to reopen and we dismissed the motion on February 21, 2014. The petitioner filed a second motion to reopen and reconsider and we denied these motions on May 5, 2014. The petitioner has filed another motion to reopen and motion to reconsider. The motions will be denied, and our initial decision dismissing the appeal will not be disturbed.

The petitioner describes itself as a software development 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 "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).¹

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 December 29, 2010. *See* 8 C.F.R. § 204.5(d).

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

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.

We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

The regulations at 8 C.F.R. § 103.5(a)(2) state, in pertinent part, that "[a] motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence." In this case, the petitioner has not submitted any additional evidence that was not previously submitted as required for motions to reopen under 8 C.F.R. § 103.5(a)(2). Therefore, the motion to reopen will be denied.

The motion to reconsider qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner asserts that our prior decision was an erroneous misapplication of law or policy. Therefore, the motion to reconsider is properly asserted.

¹ On motion, counsel states in his brief that, "First and foremost it is pertinent to mention that captioned case is filed under 'Skilled Worker' EB-3 category." This is incorrect as the petitioner checked box 2.e. on the Form I-140, Immigrant Petition for Alien Worker, indicating that the petition is filed under the "professional" category.

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. Under section 212(a)(5)(A)(i) of the Act, the DOL's role in this process is to certify 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.

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.

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). As noted above, counsel incorrectly asserts that the petitioner requested classification under the "skilled worker" category pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i). No request for skilled worker classification was made in the instant petition and this decision will not address whether (1) the labor certification supports classification as a skilled worker, or (2) whether the beneficiary may be classified as a skilled worker. We will not consider a petition in a different visa classification once the director has rendered a decision. A petitioner may not make material changes to a petition in an effort to conform a deficient filing to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

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 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 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 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), 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 *Snappnames.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 indicated in Part 2 of the Form I-140, Immigrant Petition for Alien Worker, that it was filing for classification in the professional category requiring a U.S. bachelor’s degree or the foreign equivalent thereof. The labor certification states that the beneficiary possesses a Bachelor’s degree in Accounting from the [REDACTED] India, completed in 1996. The record contains a copy of the beneficiary’s Bachelor of Commerce diploma and transcripts from the [REDACTED] issued in 1999.

The record also contains evaluations of the beneficiary’s educational credentials prepared by the following individuals:

- By [REDACTED] Ph.D., for [REDACTED], concluding that the beneficiary’s Bachelor of Commerce degree is the functional equivalent of a Bachelor’s degree in Computer Science, representing 146 semester credit hours. Dr. [REDACTED] notes that a number of universities in the United States admit students to master’s degree programs in computer science even though their undergraduate degree is in a different field of study. Dr. [REDACTED] appears to conclude that because these programs accept different fields of studies as qualification for graduate courses in computer science, the beneficiary’s Bachelor of Commerce degree, in light of “its practical utility,” should be deemed the functional equivalent of a U.S. Bachelor’s degree in Computer Science.
- By [REDACTED] for [REDACTED], concluding that the beneficiary’s Bachelor of Commerce degree is alone equivalent to a U.S. Bachelor of Computer Science Degree.
- By [REDACTED], concluding that the beneficiary’s Bachelor of Commerce degree from the [REDACTED] and four years and ten months of work experience is equivalent to a U.S. bachelor’s degree.

- By [REDACTED], Ph.D. for [REDACTED], concluding that the beneficiary's Bachelor of Commerce degree from the [REDACTED] and her Advanced Diploma in Software Technology and Systems Management from [REDACTED] are equivalent to a Bachelor's degree in Computer Information Systems.

As indicated above, the evaluations by Dr. [REDACTED] and Ms. [REDACTED] conclude that the beneficiary's three-year bachelor's degree alone is equivalent to a U.S. Bachelor's degree in Computer Science. 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 evaluation by Mr. [REDACTED] relies on the beneficiary's bachelor's degree and work experience whereas the evaluation by Dr. [REDACTED] relies on her bachelor's degree and advanced diploma from [REDACTED]. Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees and/or work experience, 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.

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 nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.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 discusses postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate degree. EDGE states that a postgraduate diploma following a two-year bachelor's degree represents attainment of a level of education comparable to one year of university study in the United States. EDGE also states that a postgraduate diploma following a

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. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

three-year bachelor's degree represents attainment of a level of education comparable to a bachelor's degree in the United States. However, the "Advice to Author Notes" section states:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

The evidence in the record on appeal did not establish that the beneficiary's postgraduate diploma was issued by an accredited university or institution approved by AICTE, or that a two- or three-year bachelor's degree was required for admission into the program of study.

We have accessed [REDACTED]'s website to determine what type of educational services it provides. See [REDACTED] (accessed March 23, 2015). [REDACTED] offers a variety of programs for working professionals, graduates, college students, and individuals who are interested in vocational training. The website states that [REDACTED] offers graduate programs in "Information Technology, Banking and Finance, Digital marketing, Business Analytics, Soft Skills Training, BPO Voice, Retail, and Telecom," but it indicates that the majority of these programs do not require a college degree. *Id.* The website also states that [REDACTED] offers college students courses in "Information Technology, Digital Marketing, Soft Skills Training, Finance and Accounting, Retail, BPO Voice, and Telecom," but it states that these courses are to "complement their studies" rather than to pursue a degree in a particular field of study. *Id.* There is no evidence that the beneficiary's admission to [REDACTED] was predicated upon the completion of a bachelor's degree program.

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in "CS, Eng (any), Science (any), CIS, MIS," as required by the labor certification.

After reviewing all of the evidence in the record, it is concluded that the petitioner has not established that the beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree from a college or university. The petitioner has failed to overcome the conclusions of EDGE with reliable, peer-reviewed information. 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). USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by “examin[ing] 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]” even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

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

- H.4. Education: Bachelor’s degree in “CS, Eng (any), Science (any), CIS, MIS.”
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- 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: 24 months.
- H.14. Specific skills or other requirements: Any combination of education, training and experience equivalent to a bachelor’s [degree] is acceptable.

As discussed above, the beneficiary possesses a Bachelor of Commerce degree from the University of Mumbai, which according to EDGE is equivalent to “three years of university study in the United States.”

The terms of the labor certification require a four-year U.S. bachelor’s degree in Bachelor’s degree in “CS, Eng (any), Science (any), CIS, MIS” or a foreign equivalent degree. On motion, the petitioner asserts for the first time that Part H.10 of the labor certification allows 24 months of experience in any IT related occupation as alternate requirements to a bachelor’s degree or foreign equivalent degree. However, 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. Part H.8 indicates that there is not an alternate combination of education and experience that is acceptable. Part H.14 states that “[a]ny combination of education, training and experience equivalent to a bachelor’s degree is acceptable.” As discussed above, if the labor certification does not require at least a four-year U.S. bachelor’s degree or a foreign equivalent degree, the petition cannot be approved in the professional category. 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).

The beneficiary does not possess a four-year 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.

The petitioner cites three non-precedent decisions that we previously issued to support its assertion that the beneficiary meets the terms of the labor certification. 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 first case that the petitioner cites addresses a scenario in which we held that due to the conclusions of EDGE regarding the beneficiary's Bachelor of Commerce degree and her Final Exam and Associate Membership in Accounting, the beneficiary possessed the equivalent of a U.S. Bachelor's degree in Accounting. However, as stated above, in this case EDGE concludes that the beneficiary's Bachelor of Commerce degree is the equivalent of three-years of university study in the United States. Therefore, even if the case cited by the petitioner was a precedent decision, it would not demonstrate that the instant beneficiary's education constitutes the foreign equivalent of a U.S. bachelor's degree to meet the terms of the labor certification.

The petitioner cites a second non-precedent decision we had previously issued in which we addressed whether the beneficiary qualified both under the professional and skilled worker categories. However, at the time that case was filed the Form I-140 did not have separate boxes for the professional and skilled worker classification. For that reason, we considered whether the beneficiary met the requirements for each of those classifications. In addition, we concluded in that case that although the beneficiary possessed the foreign equivalent of a U.S. bachelor's degree, the labor certification specifically required four years of college education, which the beneficiary had not completed. Thus, we held that the beneficiary did not meet the terms of the labor certification to qualify for classification in either the professional or the skilled worker categories. In this case, as noted above, the labor certification requires a Bachelor's degree in "CS, Eng (any), Science (any), CIS, MIS" or the foreign equivalent thereof, and the petitioner specifically requested classification in the professional category in Part 2 of the Form I-140. Therefore, we will not consider the instant petition in the skilled worker category.

We note that the third non-precedent case cited by the petitioner indicates that we approved a Form I-140 in the skilled worker category in which the petitioner demonstrated that the beneficiary possessed two years of experience in the job offered. However, that case was specifically filed in the skilled worker category unlike the instant petition. As stated above, this is not a precedent decision that is binding in this case and differs from the facts of the instant petition.

In summary, the petitioner has not established that the beneficiary possessed a U.S. bachelor's degree or a foreign equivalent degree from a college or university. The petitioner also has not established 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.



After reconsidering the instant petition, we affirm our decision dismissing the appeal 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 motion to reopen and the motion to reconsider are denied. Our initial decision dismissing the appeal will not be disturbed. The petition remains denied.