



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

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

MATTER OF T-C-S-

DATE: NOV. 6, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a school, seeks to classify the Beneficiary as a professional worker. *See* Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

The Petitioner seeks to permanently employ the Beneficiary in the United States as an AMI Montessori elementary teacher. The Petitioner seeks to classify the Beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Act. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. 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 March 31, 2009. *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 record shows that the appeal is properly filed, timely 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.

As set forth in the Director's April 2, 2015 denial, the issue in this case is whether or not the Petitioner has established that the Beneficiary holds at least a bachelor's degree or foreign equivalent such that the Beneficiary may be found qualified for classification as a professional worker.

We conduct 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

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 the regulation at 8 C.F.R. § 103.2(a)(1).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii) provides in pertinent part:

(C) Professionals. 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. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

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.

On appeal, the Petitioner asserts that the Director erred in not considering the petition for classification as a skilled worker. On Part 2.e. of the Form I-140, Immigrant Petition for Alien Worker, the Petitioner indicated that it was filing the petition for a professional worker. The Petitioner did not check Part 2.f. of the Form I-140 which is the box to request the skilled worker classification. The Petitioner notes that, while the Form I-140 submitted by the Petitioner separated out requests for professional and skilled worker categories, previous versions of the Form I-140 bundled the request for adjudication as a professional and skilled worker together. The Petitioner contends that, as the underlying statutory and regulatory scheme did not change prior to the change of the Form I-140, we must consider the instant petition under both the professional and skilled worker categories regardless of the way the categories are presented on the Form I-140. In support of its contentions, the Petitioner refers to a decision we issued concerning our adjudication of a petition under both the skilled worker and professional classifications, but does not provide its published citation. 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 Petitioner has not provided any laws, regulations or precedent case law which supports its argument that United States Citizenship and Immigration Services (USCIS) should consider the

instant petition under both the professional and skilled worker categories when the Petitioner only requested classification under the professional category.

Additionally, there is no provision in statute or regulation that compels USCIS to adjudicate a petition under a different visa classification in response to a petitioner's request to change it, once the decision has been rendered. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

Further, the statutory definition of professional positions found at section 101(a)(32) of the Act includes the proffered position of teachers in elementary schools. The DOL assigned the occupational code of 25-2021, Elementary School Teachers, to the proffered position.² The minimum requirements for the proffered position as certified by the DOL on the ETA Form 9089 are a bachelor's degree in any discipline, an AMI (Montessori) Certification and 18 months of experience in the proffered position or as an instructor; a bachelor's degree in education and an AMI Certification; or a master's degree, an AMI Certification and one year of experience. Thus, combined with the statutory definition and the DOL's classification and assignment of education and experience requirements for the occupation, the certified position must be considered as a professional.

While the labor certification meets the minimum requirements for classification as a professional, the Beneficiary does not possess the minimum educational requirements for classification as a professional.

The minimum qualifications required to perform the duties of the offered position are set forth on the labor certification. In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's degree in any discipline and AMI (Montessori) Certification.
- H.5. Training: 9 months in a Montessori teacher training course leading to AMI certification.
- H.6. Experience in the job offered: 18 months.
- H.7. Alternate field of study: Bachelor's in education plus AMI certification, which is essential for this position.
- H.8. Alternate combination of education and experience: Master's degree and 1 year of experience.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 18 months as an instructor (providing structured instructions to a group, in classroom).
- H.14. Specific skills or other requirements: Association of Montessori Internationale certification (AMI certification) required.

² O*NET is the occupational classification system used by the DOL and is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. *See* www.onetonline.org; and www.bls.gov/soc/home.htm.

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The labor certification states that the Beneficiary possesses an AMI certification in the Montessori Method of teaching from the [REDACTED] Wisconsin, completed in 2006.

The record contains a copy of the Beneficiary's Bachelor of Commerce diploma and transcripts from [REDACTED] India, issued in 1997.³ It also contains a copy of the Beneficiary's [REDACTED] diploma from the [REDACTED] issued in 2006.

The record contains an educational credentials evaluation and an experience and training evaluation prepared by [REDACTED] for [REDACTED] (E-A-) on March 14, 2007, regarding the Beneficiary.⁴ The educational evaluation states that the Beneficiary's three-year Bachelor of Commerce degree combined with three years of professional teaching experience is equivalent to a U.S. Bachelor of Science degree in education from a regionally accredited college or university in the United States. The evaluation references a diploma and statement of marks from [REDACTED] training school [REDACTED] India, which is not included in the record.⁵ The evaluation continues to state that the Beneficiary's Montessori certifications from [REDACTED] and [REDACTED] represent two years of academic credit towards a U.S. baccalaureate degree in education from a regionally accredited college or university in the United States. The experience and training evaluation states that the Beneficiary's Montessori certifications from [REDACTED] and [REDACTED], as well as employment verification letters indicate that the Beneficiary completed training in the [REDACTED] method and also worked for over three years as a teacher at [REDACTED] India, and with the Petitioner. The experience and training evaluation states that the Beneficiary's academic background and training in education and other subjects, along with her work experience are equivalent to a total of six years of baccalaureate education and this combination is comparable to a U.S. baccalaureate degree in early childhood education from a regionally accredited U.S. college or university.

The record contains an evaluation of the Beneficiary's educational credentials prepared by [REDACTED] for E-A- on January 28, 2015. The educational evaluation states that the Beneficiary's Bachelor of Commerce degree is equivalent to a four-year U.S. Bachelor of Science degree in business administration. The evaluation further states that the Beneficiary's Montessori certifications from [REDACTED] and [REDACTED] are typically one year in duration and are generally accepted

³ The degree and transcripts bear the Beneficiary's maiden name of [REDACTED]

⁴ USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

⁵ The Petitioner must provide a copy of the Beneficiary's Montessori certification and transcripts from [REDACTED] with any further filings.

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as equal to 10-11 courses in education, or approximately one year of study in education, at an American university. The evaluation goes on to state that, even if the Beneficiary's Bachelor of Commerce degree is not considered to be the equivalent of a four-year U.S. bachelor's degree, the Beneficiary's Montessori certifications are equal to two years of full-time university-level study.

The record contains an evaluation of the Beneficiary's educational credentials prepared by [REDACTED] for [REDACTED] on January 20, 2015. The educational evaluation states that the Beneficiary's three-year Bachelor of Commerce degree is equivalent to a bachelor of business administration, representing 129 semester credit hours, from a regionally accredited college or university in the United States.

[REDACTED] January 28, 2015, evaluation and the [REDACTED] evaluation are inconsistent with [REDACTED] March 14, 2007, evaluation regarding whether the Beneficiary's three-year Bachelor of Commerce degree is equivalent to three years of university level study or a four-year bachelor's degree from a U.S. college or university. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Additionally, as discussed below, the evaluations are inconsistent with the Electronic Database for Global Education (EDGE) regarding the equivalency of the Beneficiary's three-year Bachelor of Commerce degree.

The Petitioner relies on Beneficiary's three-year bachelor's degree or her bachelor's degree combined with her Montessori certifications as being the foreign equivalent of a U.S. bachelor's degree. A three-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees 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 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.⁶

⁶ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we 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

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

evaluations are inconsistent with EDGE and public information regarding the equivalency of the Beneficiary’s Montessori certifications. EDGE does not find that the Beneficiary’s India or American Montessori certifications have any educational equivalency in the United States. is not an accredited or recognized post-secondary institution and, as such, any studies completed at would not constitute university-level studies. See www.chea.org (accessed October 14, 2015). Additionally is not an approved institute of post-secondary education under the Indian University Grants Commission (UGC) or the All India Council for Technical Education AICTE). See www.ugc.ac.org and www.aicte-india.org (accessed October 14, 2015).

Based on the conclusions of EDGE, the evidence in the record is not sufficient to establish that the Beneficiary possesses the foreign equivalent of a U.S. bachelor’s degree from a college or university as required for classification as a professional.

Beyond the decision of the Director,⁷ the evidence in the record does not establish that the Beneficiary possesses the required training or experience for the offered position. The labor certification states that the offered position requires 18 months of experience in the proffered position or as an instructor.

We note that the Beneficiary holds an AMI certification from which may be considered to meet the 9 months of training requirement as the requirements specify that the training be completed in a Montessori teacher training course leading to AMI certification. However, the Petitioner may not use the Beneficiary’s AMI certification to meet the 9 month training requirement as well as the bachelor’s degree requirement, as the language of the labor certification does not specifically permit concurrent acquisition of education and training in the same course.

Part K of the labor certification states that the Beneficiary qualifies for the offered position based on experience as an elementary and primary teacher with

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.

⁷ An application or petition that fails to comply with the technical requirements of the law may be denied by us 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 we conduct appellate review on a *de novo* basis).

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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.

Cite as *Matter of T-C-S-*, ID# 14482 (AAO Nov. 6, 2015)