U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF V-I-, INC.

DATE: DEC. 9, 2015

MOTION ON ADMINSTRATIVE APPEALS OFFICE DECISION

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

The Petitioner, a provider of software design, development, and consulting services, seeks to permanently employ the Beneficiary as a software engineer (jr.) under the immigrant classification of member of the professions holding an advanced degree. *See* Immigration and Nationality Act (the Act) § 203(b)(2)(A), 8 U.S.C. § 1153(b)(2)(A). After approving the petition on August 27, 2008, the Director, Texas Service Center, revoked the petition's approval on July 29, 2014. We dismissed the appeal from the revocation decision. The matter is now before us on a motion to reopen and a motion to reconsider. The motions will be denied.

U.S. Citizenship and Immigration Services (USCIS) may revoke a petition's approval "at any time" for "good and sufficient cause." INA § 205, 8 U.S.C. § 1155. A director's realization of a petition's erroneous approval may constitute good and sufficient cause for revocation if supported by the record. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988).

The Director concluded that the record at the time of the petition's approval did not establish the Petitioner's continuing ability to pay the Beneficiary's proffered wage. The Director also found that the record did not establish a *bona fide* job offer to the Beneficiary. Accordingly, the Director revoked the petition's approval.

On appeal, we affirmed the Director's decision that the record did not establish the Petitioner's continuing ability to pay the proffered wage. Accordingly, on March 13, 2015, we dismissed the Petitioner's appeal.

On motion, the Petitioner argues that it need not establish its ability to pay multiple beneficiaries of petitions that remained pending after the instant petition's priority date. Even if it must, the Petitioner asserts that it has demonstrated its ability to do so.

The motions are properly filed. They state new facts supported by documentary evidence and reasons for reconsideration. *See* 8 C.F.R. §§ 103.5(a)(2), (3) (stating the criteria for motions to reopen and reconsider).

We consider all pertinent evidence of record and conduct review on a *de novo* basis. *See, e.g., Soltane v. Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

I. THE PETITIONER'S ABILITY TO PAY THE PROFFERED WAGE

A petitioner must demonstrate its continuing ability to pay a beneficiary's proffered wage from a petition's priority date until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay must include copies of annual reports, federal income tax returns, or audited financial statements. *Id.*

In the instant case, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL), accompanies the petition. The labor certification states the proffered wage of the offered position of software engineer (jr.) as $65,000 to $84,667 per year. The petition's priority date is June 25, 2007, the date the DOL accepted the labor certification application for processing. *See* 8 C.F.R. § 204.5(d).

An employer may state a proffered wage as a range if the range's bottom amount equals or exceeds the prevailing wage rate. *See* U.S. Dep't of Labor, Final Rule for Labor Certification Applications, 69 Fed. Reg. 77326, 77339, 77348 (Dec. 27, 2004) (allowing employers to state wage ranges on notices of filing and in advertisements if the bottoms of the ranges exceed the respective prevailing wage rates). On the Form I-140, Immigrant Petition for Alien Worker, the Petitioner stated the proffered wage as $65,000 per year.

"Good and sufficient cause" exists to revoke a petition's approval if the evidence at the time of the decision, including any explanation or rebuttal submitted by the petitioner, would have warranted the petition's denial. *Matter of Estime*, 19 I&N Dec. 450, 452 (BIA 1987). To determine whether the instant petition should have been denied, we will consider the Petitioner's ability to pay the proffered wage from 2007, the year of the petition's priority date, through 2008, the year of its approval.

In determining a petitioner's ability to pay, we examine whether it paid a beneficiary the full proffered wage each year from a petition's priority date. If a petitioner did not pay a beneficiary the full proffered wage each year, we examine whether it had sufficient annual amounts of net income or net current assets to pay the difference between the wages paid, if any, and the annual proffered wage.[1] If a petitioner's net income or net current assets are insufficient to demonstrate its ability to pay, we may also consider the overall magnitude of its business activities. *See Matter of Sonegawa,* 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

The instant record contains copies of the Beneficiary's IRS Forms W-2, Wage and Tax Statements, since 2007. The Forms W-2 indicate the Petitioner's payments to the Beneficiary of $69,235.24 in 2007 and $62,114.16 in 2008. The amount on the 2007 Form W-2 exceeds the annual proffered

[1] Federal courts have upheld our method of determining a petition's ability to pay. *See River St. Donuts, LLC v. Napolitano*, 558 F.3d 111, 118 (1st Cir. 2009); *Tongatapu Woodcraft Haw., Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984)); *Estrada-Hernandez v. Holder*, -- F. Supp. 3d --, 2015 WL 3634497, *5 (S.D. Cal. 2015); *Rivzi v. Dep't of Homeland Sec.*, 37 F. Supp. 3d 870, 883-84 (S.D. Tex. 2014) aff'd, -- Fed. Appx. --, 2015 WL 5711445, *1 (5th Cir. Sept. 30, 2015).

wage of $65,000. Therefore, the record demonstrates the Petitioner's ability to pay the proffered wage in 2007. However, the amount on the 2008 Form W-2 does not demonstrate the Petitioner's ability to pay the individual proffered wage to the Beneficiary that year.

Nevertheless, we credit the wages the Petitioner paid the Beneficiary in 2008. The Petitioner need only demonstrate its ability to pay the difference between the Beneficiary's wages and the annual proffered wage. Therefore, the Petitioner need only demonstrate its ability to pay $2,885.84 in 2008.

A copy of the Petitioner's 2008 federal income tax return reflects an annual net income amount of $13,794.[2] The Petitioner's tax return reflects sufficient net income to pay the difference between the wages paid to the Beneficiary and the annual proffered wage in 2008. The record therefore establishes the Petitioner's ability to pay the Beneficiary's individual proffered wage in 2008.

A. Whether the Petitioner Must Demonstrate Its Ability to Pay Multiple Beneficiaries

The instant record demonstrates the Petitioner's ability to pay the individual proffered wage of the Beneficiary at the time of the petition's approval. However, in our appellate decision, we required the Petitioner to demonstrate its ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of other petitions it filed that remained pending after the instant petition's priority date.

The Petitioner argues that regulations and case law require the demonstration of its ability to pay a proffered wage for only a single beneficiary of a single petition, not for multiple beneficiaries of multiple petitions. The Petitioner asserts that its ability to pay multiple beneficiaries is "completely irrelevant" to its ability to pay the instant Beneficiary.

We disagree. A petitioner must demonstrate its ability to pay a proffered wage to establish a "realistic" job offer. *See Matter of Great Wall*, 16 I&N Dec. 142, 145 (Acting Reg'l Comm'r 1977) (stating that "the Service must consider the merits of the petitioner's job offer, so that a determination can be made whether the job offer is realistic and whether the wage offer can be met"). *Great Wall* and the regulation at 8 C.F.R. § 204.5(g)(2) do not specifically address a petitioner with multiple beneficiaries. However, like other liabilities, a petitioner's wage obligations must be considered when determining whether it can *realistically* pay a proffered wage.

[2] The Petitioner files federal income taxes as an S corporation. An S corporation with credits, deductions, or other adjustments to its income from sources other than a trade or business reports its net income on Schedule K to IRS Form 1120S, U.S. Income Tax Return for an S Corporation. The instant Petitioner reported adjustments to its income from sources other than a trade or business in 2007 and 2008. Lines 18 of the Schedules K of the Petitioner's 2007 and 2008 income tax returns therefore reflect its annual net income amounts. *See* Internal Revenue Serv., Instructions to Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed Dec. 3, 2015).

For example, a company with annual amounts of net income or net current assets of $50,000 could realistically pay a single beneficiary's proffered wage of $50,000. However, without demonstrating corresponding increases in its net income or net current assets, that same company could not realistically pay the same $50,000 proffered wage to an unlimited number of beneficiaries of other petitions.

Under the instant Petitioner's argument, the company in our example could establish its ability to pay proffered wages to an unlimited number of beneficiaries, as long as each beneficiary's proffered wage did not exceed $50,000. However, a company with annual amounts of net income or net current assets of $50,000 cannot *realistically* pay wages of $50,000 to an unlimited number of beneficiaries. *See Matter of Great Wall*, 16 I&N Dec. at 144-45; *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where the petitioner did not establish its ability to pay the proffered wages of multiple beneficiaries).

Because it paid wages to the Beneficiary in 2007 and 2008 that equaled or exceeded the annual proffered wage, the Petitioner argues that it need not further demonstrate its ability to pay the proffered wages of other beneficiaries whose petitions remained pending after the instant petition's priority date. The Petitioner cites a USCIS policy memorandum in support of its argument. *See* Memorandum, William R. Yates, Assoc. Dir. for Ops., U.S. Citizenship & Immigration Servs., "Determination of Ability to Pay under 8 CFR 204.5(g)(2)" (May 4, 2004), *available at* http://www.uscis.com/sites/default/files/files/nativedocuments/abilitytopay_4may04.pdf (accessed Dec. 3, 2015). The Petitioner's brief on motion states: "Because the Beneficiary was paid at least the amount of the offered wage . . ., no further analysis of [its] ability to pay for these years is needed, as a matter of law."

However, the record does not support the Petitioner's assertion that the Beneficiary's 2008 wages equaled or exceeded the annual proffered wage of $65,000. As previously indicated, the Beneficiary's 2008 Form W-2 states the Petitioner's payment to him of $62,114.16.

Moreover, USCIS policy memoranda are not legally binding. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (stating that an agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.") Even if the policy memo was binding, we do not agree with the Petitioner's interpretation of it. The memo states that USCIS adjudicators "should make a positive ability to pay determination" if the record contains initial evidence required by 8 C.F.R. § 204.5(g)(2) and "credible verifiable evidence that the petitioner not only is employing the beneficiary but also has paid or currently is paying the proffered wage."

However, the memo does not specifically address a petitioner, like the instant Petitioner, obliged to pay combined proffered wages of multiple beneficiaries. Consistent with the memo, a petitioner with multiple beneficiaries demonstrates its ability to pay if it demonstrates its payment of *all* of its relevant beneficiaries in amounts equaling or exceeding their annual proffered wages.

For the foregoing reasons, we reject the Petitioner's argument. To establish a realistic job offer, the Petitioner must demonstrate its ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of its other petitions that remained pending after the instant petition's priority date.

B. The Petitioner's Ability to Pay Multiple Beneficiaries

As of the instant petition's approval date, USCIS records indicate the Petitioner's filing of at least 39 other I-140 petitions that remained pending after the petition's priority date of June 25, 2007.[3] The Petitioner must therefore demonstrate its ability to pay the combined proffered wages of the instant Beneficiary and the beneficiaries of these other petitions. The Petitioner must demonstrate its ability to pay the combined proffered wages from the instant petition's priority date until the other beneficiaries obtained lawful permanent residence, or until their petitions were denied, withdrawn, or revoked.

Our NOID notified the Petitioner of the receipt numbers of petitions that remained pending after the instant petition's priority date and invited it to provide additional information about them. The additional requested information included their priority dates and proffered wage amounts. We also asked the Petitioner whether it paid wages to any of the other beneficiaries, whether any of them obtained lawful permanent residence, and whether their petitions were denied, withdrawn, or revoked.

The record on motion does not include the proffered wages for 12 of the 39 petitions that remained pending after the instant petition's priority date.[4] As indicated in our NOID, without this information, we are unable to determine the Petitioner's ability to pay the combined proffered wages of its beneficiaries. The record at the time of the petition's approval therefore did not establish the Petitioner's ability to pay the proffered wage.

The Petitioner indicated that 28 of the 39 beneficiaries left its employment. It asserts that it withdrew their petitions and has no obligation to demonstrate its ability to pay their proffered wages.[5] The Petitioner asserts that the petitions were automatically revoked under 8 C.F.R. §

[3] USCIS records identify the receipt numbers of an additional four petitions as: [redacted] However, because we did not notify the Petitioner of these additional petitions in our notice of intent to dismiss (NOID), dated November 13, 2014, we will not consider them.

[4] USCIS records identify the receipt numbers of the 12 petitions as: [redacted]

[5] USCIS records identify the receipt numbers of the 28 petitions as: [redacted]

205.1(a)(3)(iii)(C) as of their dates of approval. Therefore, the Petitioner argues that it need not demonstrate its ability to pay the proffered wages of those petitions.

However, 8 C.F.R. § 205.1(a)(3)(iii)(C) provides for automatic revocation "[u]pon written notice of withdrawal filed by the petitioner." The instant record does not document the Petitioner's written withdrawals of the petitions. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citation omitted) (finding that assertions unsupported by documentary evidence are insufficient to meet the burden of proof in visa petition proceedings). USCIS records indicate the withdrawal of only one of the 28 petitions, more than four years after the petition's filing.[6]

Also, the regulation at 8 C.F.R. § 205.1(a)(3)(iii)(C) would not apply to withdrawals of unapproved petitions. *See* 8 C.F.R. § 205.1(a) (stating that the regulation governs revocation of the "*approval* of a petition or self-petition made under section 204 of the Act," 8 U.S.C. § 1154) (emphasis added). The record does not indicate whether the Petitioner's purported withdrawals of the petitions occurred before or after approval. In addition, even if the record established the withdrawals and resulting automatic revocations of the petitions, the Petitioner would still need to demonstrate its ability to pay the combined proffered wages from the instant petition's priority date until the dates of the petitions' revocations.

The Petitioner also asserts that it need not demonstrate its ability to pay - for any period - the proffered wages of beneficiaries who obtain lawful permanent residence. Citing *Matter of Villarreal-Zuniga*, 23 I&N Dec. 886 (BIA 2006) and *Matter of Harry Bailen Builders, Inc.*, 19 I&N Dec. 412 (Comm'r 1986), the Petitioner argues that an I-140 petition "ceases to exist, as a matter of law, once the alien's status is adjusted" to that of a lawful permanent resident.

We do not find the cases cited by the Petitioner persuasive in the context of determining a petitioner's ability to pay. The cases address whether beneficiaries may use approved I-140 petitions to obtain lawful permanent residence more than once. We agree that a petitioner need not demonstrate its ability to pay a proffered wage *after* a corresponding beneficiary obtains lawful permanent residence. However, a petitioner must establish its ability to pay from a petition's priority date "*until* the beneficiary obtains lawful permanent residence." 8 C.F.R. § 204.5(g)(2) (emphasis added). Therefore, the instant Petitioner must establish its ability to pay the beneficiaries of its petitions that remained pending after the instant petition's priority date, even if the beneficiaries ultimately obtained lawful permanent residence.

As previously indicated, we may also consider the overall magnitude of a petitioner's business in determining its ability to pay a proffered wage. *See Sonegawa,* 12 I&N Dec. at 614-15. In *Sonegawa*, the petitioner conducted business for more than 11 years, routinely earning annual gross incomes of about $100,000 and employing at least four full-time workers. However, in the year of the petition's filing, the petitioner's tax returns did not reflect her ability to pay the proffered wage. During that year, the petitioner relocated her business, causing her to pay rent on two locations for a

[6] USCIS records identify the petition's receipt number as

five-month period, to incur substantial moving costs, and to briefly suspend her operations. Despite these setbacks, the Regional Commissioner determined that the petitioner would likely resume successful business operations and had established her ability to pay. The record identified the petitioner as a fashion designer whose work had been featured in national magazines. The record indicated that her clients included the then Miss Universe, movie actresses, society matrons, and women included on lists of the best-dressed in California. The record also indicated the petitioner's frequent lectures at design and fashion shows throughout the United States and at California colleges and universities.

As in *Sonegawa*, we may consider evidence of a petitioner's ability to pay beyond its net income and net current assets. We may consider such factors as: the number of years the petitioner has conducted business; the growth of its business; its number of employees; the occurrence of any uncharacteristic business expenditures or losses, its reputation within its industry; whether a beneficiary will replace a current employee or outsourced service; and other evidence of its ability to pay a proffered wage.

In the instant case, the record indicates the Petitioner's continuous business operations since 1996 and its employment of 60 people at the time of the petition's filing. The Petitioner's tax returns reflect increasing gross revenues over the past three years, but more than five years from the petition's priority date.

However, unlike in *Sonegawa*, the instant record does not indicate any uncharacteristic business expenses or losses, or the Petitioner's outstanding reputation in its industry. The record also does not indicate the Beneficiary's replacement of a current employee or outsourced service. Also unlike the petitioner in *Sonegawa*, the instant Petitioner must demonstrate its ability to pay multiple beneficiaries and has not provided information regarding all of its petitions that remained pending after the instant petition's priority date.

Thus, assessing the totality of the circumstances in this individual case, the record at the time of the petition's approval did not establish the Petitioner's continuing ability to pay the proffered wage from the petition's priority date onward. We will therefore affirm our appellate decision and deny the Petitioner's motions.

II. THE BONA FIDES OF THE JOB OFFER

Our appellate decision did not address the Director's conclusion that the record did not establish a *bona fide* job offer. We will therefore now review this revocation ground.

A petition for an advanced degree professional must be accompanied by an individual labor certification, application for Schedule A designation, or evidence of a beneficiary's qualifications for a shortage occupation. 8 C.F.R. § 204.5(k)(4)(i). A labor certification remains valid only for the particular job opportunity, the foreign national, and the geographic area of intended employment stated on it. 20 C.F.R. § 656.30(c)(2).

A petitioner must intend to employ a beneficiary pursuant to the terms and conditions of an accompanying labor certification. *See Matter of Izdebska*, 12 I&N Dec. 54, 54 (Reg'l Comm'r 1966) (upholding a petition's denial where the petitioner did not intend to employ the beneficiary as a live-in domestic worker pursuant to the accompanying labor certification); *see also Matter of Sunoco Energy Dev. Co.*, 17 I&N Dec. 283, 284 (Reg'l Comm'r 1979) (affirming a petition's denial where an employer did not intend to employ a beneficiary in the geographic area of intended employment stated on the accompanying labor certification). For labor certification purposes, the term "employment" means "[p]ermanent, full-time work." 20 C.F.R. § 656.3.

In the instant case, the Director found that the record did not establish the Petitioner's intention to employ the Beneficiary. *See* INA § 204(a)(1)(f), 8 U.S.C. § 1154(a)(1)(f) (stating that any employer "desiring and intending" to employ a foreign national in the U.S. may file a petition). The Director cited a July 16, 2012, letter from the Petitioner's president to USCIS. The letter requested withdrawal of the Petitioner's H-1B nonimmigrant visa petition on the Beneficiary's behalf and indicated that the company no longer employed him.

A revocation decision may only be grounded upon, and a petitioner need only respond to, the factual allegations in a notice of intent to revoke. *Matter of Arias*, 19 I& Dec. 568, 570 (BIA 1988). The instant notice of intent to revoke (NOIR), dated October 30, 2013, alleged that the job offer was not *bona fide*. However, the NOIR did not support the allegation with the July 16, 2012, letter. Rather, the NOIR cited discrepancies among the Beneficiary's stated addresses on various immigration-related forms and the geographic area of intended employment stated on the Form I-140 and the accompanying labor certification. Because the decision was based on a factual allegation that was not contained in the NOIR, USCIS improperly revoked the petition's approval based on the *bona fides* of the job offer.

Moreover, even if USCIS properly cited the July 16, 2012, letter in support of its revocation determination, the Petitioner on appeal demonstrated the Beneficiary's return to work for it in 2013 after temporarily leaving its employment in 2012. Thus, the letter did not support a finding of the Petitioner's intention to no longer employ the Beneficiary in the offered position. Also, a petitioner's non-employment of a beneficiary does not necessarily negate its intention to employ the individual in the offered position, as a beneficiary need not work for a petitioner in an offered position unless and until granted lawful permanent residence.

For the foregoing reasons, the record did not support revocation of the petition's approval based on the *bona fides* of the job offer. We will therefore withdraw that portion of the Director's decision.[7]

[7] The Director also found the Beneficiary's willful submission of false evidence in support of the petition. This finding was immaterial to the Director's revocation decision. Our appellate decision did not address the finding. However, to clarify the record, we find that the Petitioner rebutted the misrepresentation finding by demonstrating the validity of Beneficiary's evidence.

III. THE BENEFICIARY'S EDUCATIONAL QUALIFICATIONS

Our NOID also alleged that the record did not establish the Beneficiary's possession of the qualifying educational credentials for the offered position. Our appellate decision did not dismiss the Petitioner's appeal on this basis. However, upon reconsideration, we find that the record at the time of the petition's approval did not establish the Beneficiary's qualifying education for the offered position as specified on the accompanying labor certification.[8]

A petitioner must establish a beneficiary's possession of all the education, training, and experience specified on an accompanying labor certification by a petition's priority date. 8 C.F.R. §§ 103.2(b)(l), (12); *see also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971).

In evaluating a beneficiary's qualifications, we must examine the job offer portion of an accompanying labor certification to determine the minimum requirements of the offered position. We may neither ignore a term of the labor certification, nor impose additional requirements. *See K.R.K. Irvine, Inc.* v. *Landon,* 699 F.2d 1006, 1009 (9th Cir. 1983); *Madany* v. *Smith,* 696 F.2d 1008, 1012-13 (D.C. Cir. 1983); *Stewart Infra-Red Commissary of Mass., Inc.* v. *Coomey,* 661 F.2d 1, 3 (1st Cir. 1981).

In the instant case, the accompanying labor certification states the minimum requirements of the offered position of software engineer (jr.) as a Master's degree or a foreign equivalent degree in "Comp Sc/Rel. Field/Math/Engg/Business Admin/Acctng [Commerce]/Finance/Sc." The Petitioner also indicated on the ETA Form 9089 that it would accept an alternate combination of education and experience: a Bachelor's degree plus five years' experience.

Part H.14 of the ETA Form 9089 elaborates on the position's requirements. It states that the "[e]mployer requires a M.S./M.A. (Or Foreign Equiv.) in Computer Science/Related Field/Math/Engineering/Business Administration/Related Field (Accounting [Commerce]/Finance) or Science and 0 months experience in Job Offered, or alternately, a B.S./B.A. (Or Foreign Equiv.) in any of the above specified majors and 5 years progressive post Baccalaureate experience, including, at least 1 year of experience in the Job Offered."

The Beneficiary attested on the labor certification to earning a Master's degree in information technology from [redacted] in India in 2004. The record contains copies of the Beneficiary's 2004 Master of Science degree in information technology and transcripts from [redacted] in India. The record also contains a copy of a 1996 Master of Arts degree in economics from [redacted] in India.

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[8] We may deny a petition on grounds unidentified by a director in underlying proceedings. *See* 5 U.S.C. § 557(b) (stating that, except as limited by notice or rule, a federal agency on review retains all the powers it had in making the original decision); *see also Betancur v. Roark*, No. 10-11131-RWZ, 2012 WL 4862774, *9 (D. Mass. Oct. 15, 2012) (finding that our request for evidence or notice of intent to dismiss "cures" a prior, deficient notice of intent to revoke).

The Petitioner submitted a December 13, 2006, evaluation of the Beneficiary's foreign educational credentials by The evaluation concludes that the Beneficiary earned a two-year Master of Science degree from that equates to a U.S. Master of Science degree in computer information systems.

We may treat expert testimony as an advisory opinion. *See Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we may afford less weight to expert testimony that is uncorroborated, inconsistent with other information, or questionable in any way. *Id.*; *see also Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (noting that expert testimony may be given different weights depending on the extent of an expert's qualifications, or the relevance, reliability, and probative value of the testimony).

The education evaluation states that the Beneficiary "was awarded a Bachelor of Arts degree in 1994." However, the documentation accompanying the evaluation did not include copies of his purported baccalaureate degree or transcripts. Also, although the record contains a copy of a 1996 Master of Arts degree, the evaluation does not mention this degree or its U.S. equivalency. Thus, the record did not support the evaluation's finding that the Beneficiary obtained a three-year Bachelor's degree in 1994. *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

The evaluation also does not explain how the Beneficiary's five years of university studies – three years at and two years at – equate to a U.S. Master's degree, which typically requires six total years of university studies. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977) (finding that U.S. baccalaureate degrees generally require four years of university study); *see also Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 909-10 (11th Cir. 2014) (upholding USCIS's determination that a beneficiary's three-year Indian bachelor's degree and two-year Indian Master's degree did not equate to an advanced degree); *Tisco Grp., Inc. v. Napolitano*, No. 09-10072, 2010 WL 3464314, *4 (E.D. Mich. Aug. 30, 2010) (same).

In addition, the Beneficiary attested on the labor certification to full-time employment during most of his enrollment period at in 2003 and 2004. The record does not explain how the Beneficiary simultaneously worked full-time and earned a Master's degree. *See Ho*, 19 I&N Dec. at 591-92 (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

Based on the inconsistencies stated above, we reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). 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. Federal

courts have found EDGE to be a reliable, peer-reviewed source of information about foreign educational equivalencies.[9]

EDGE reports that a three-year Bachelor's degree from India equates to three years of university education in the United States. EDGE also indicates that an Indian Master's degree is comparable to a U.S. Bachelor's degree.

The EDGE information suggests that the Beneficiary did not possess a Master's degree or foreign equivalent degree as specified by the primary job requirements of the accompanying labor certification require. In the alternative, the record did not establish the Beneficiary's possession of five years of progressive, post-baccalaureate experience.

In response to our NOID, the Petitioner submitted another evaluation of the Beneficiary's foreign educational credentials, as well as letters in support of the Beneficiary's claimed qualifying post-baccalaureate experience. The second evaluation, dated December 1, 2014 and prepared by for states the Beneficiary's possession of the equivalent of a U.S. Master's degree in economics.

The 2014 evaluation equates the Beneficiary's three years of undergraduate studies at to three years of university study in the United States. Academic records indicating the Beneficiary's studies at from 1991 through 1993 accompany the evaluation.

After completing his Bachelor's degree, the evaluation states that the Beneficiary studied for his Master of Arts degree at the university from 1994 to 1996. The evaluation relies on the Beneficiary's baccalaureate and Master's degrees from to support its conclusion of the Beneficiary's possession of a U.S. Master's degree in economics. Unlike the 2006 evaluation, the 2014 evaluation does not rely on the Beneficiary's 2004 Master of Science degree in information technology.

The 2014 evaluation states disagreement with EDGE's conclusion that an Indian Master's degree equates to only a U.S. Bachelor's degree. The evaluation states that considers five years of foreign university study resulting in a Master's degree equal to a U.S. Master's degree. The evaluation asserts that EDGE's refusal to accept an Indian Master's degree as the equivalent of a U.S. Master's degree is inconsistent with its treatment of Master's degrees from other British Commonwealth countries.

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[9] *See Viraj,* 578 Fed. Appx. at 910 (finding that USCIS has discretion to discount letters and evaluations that differ from reports in EDGE, which is "a respected source of information"); *Tisco Grp.,* 2010 WL 3464314 at *4 (finding that USCIS properly weighed a petitioner's evaluations and EDGE information in reaching its conclusion regarding the beneficiary's educational qualifications); *Sunshine Rehab Servs., Inc. v. USCIS*, No. 09-13605, 2010 WL 3325442, at **8-9 (E.D. Mich. Aug. 20, 2010) (concluding that USCIS was entitled to prefer EDGE information and did not abuse its discretion in determining that a beneficiary's three-year baccalaureate degree was not the foreign equivalent of a U.S. Bachelor's degree); *Confluence Int'l, Inc. v. Holder,* No. 08-2665, 2009 WL 825793, *4 (D. Minn. Mar. 27, 2009) (finding that we provided a rational explanation for our reliance on EDGE information to support our decision).

Even if we accepted the conclusion of the 2014 evaluation, the record would not establish the possession of a foreign equivalent of a Master's or Bachelor's degree in economics as a qualification for the offered position. As previously indicated, Part H.14 of the ETA Form 9089 requires a Master's degree or foreign equivalent degree "in Computer Science/Related Field/Math/Engineering/Business Administration/Related Field (Accounting [Commerce]/Finance) or Science." The labor certification states that an alternative Bachelor's degree or foreign equivalent must also be in "the above specified majors."

The accompanying ETA Form 9089 does not specify economics as an acceptable field of study for a Master's, Bachelor's, or corresponding foreign equivalent degrees. The record does not establish the Petitioner's acceptance of economics as a "related field" to business administration, or as a "science," pursuant to the accompanying labor certification. The Petitioner did not assert the Beneficiary's possession of a degree in economics until its appeal in visa revocation proceedings.

The record also does not indicate whether the Petitioner considered U.S. workers with degrees in economics when it recruited for the job opportunity. *See* 20 C.F.R. § 656.17(i)(3) (stating that an employer generally cannot require U.S. applicants to possess qualifications beyond those possessed by a foreign national at the time of his hire).

The record does not establish economics as a field of study specified on the accompanying labor certification. Thus, the record does not establish the Beneficiary's possession of the educational qualifications stated on the labor certification by the petition's priority date. Therefore, we will also deny the motions for this reason.

IV. CONCLUSION

At the time of the petition's approval, the record did not establish the Petitioner's continuing ability to pay the combined proffered wages of its beneficiaries from the instant petition's priority date onward. We will therefore affirm our appellate decision and deny the Petitioner's motions. However, the record did not support the revocation of the petition's approval based on the *bona fides* of the job offer. We will therefore withdraw that portion of the Director's decision.

In addition, the record at the time of the petition's approval did not establish the Beneficiary's possession of educational qualifications for the offered position as specified by the accompanying labor certification by the petition's priority date. We will also deny the motions for this reason.

After careful consideration, the motions will be denied for the above stated reasons, with each considered an independent and alternative basis for denial. In visa petition revocation proceedings, a petitioner bears the burden of proving eligibility for the benefit sought. INA § 291, 8 U.S.C. § 1361; *Ho*, 19 I&N Dec. at 589. Here, that burden has not been met.

ORDER: The motion to reopen is denied.

FURTHER ORDER: The motion to reconsider is denied.

Cite as *Matter of V-I-, Inc.*, ID# 14769 (AAO Dec. 9, 2015)