U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

(b)(6)

DATE: FEB 10 2015 OFFICE: TEXAS SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the petitioner appealed the matter to the Administrative Appeals Office (AAO). We dismissed the appeal on September 30, 2014. The matter is now before us as a motion to reopen and a motion to reconsider. The motions will be granted. Our previous decision will be affirmed, and the petition will remain denied.

The petitioner is a healthcare technology solutions company. It seeks to permanently employ the beneficiary in the United States as a "quality assurance analyst." The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[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 July 24, 2012. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary's education credentials do not constitute the equivalent of a U.S. master's degree as required for classification as an advanced degree professional. On appeal, we affirmed the director's conclusion that the beneficiary did not possess the foreign equivalent of a U.S. master's degree.

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 or motion.

The regulation at 8 C.F.R. § 103.5(a)(2) states, 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 matter, the petitioner has provided evidence on motion that may be considered "new" under 8 C.F.R. § 103.5(a)(2). Therefore, the petitioner has met the requirements for a motion to reopen.

The motion to reconsider also qualifies for consideration under 8 C.F.R. § 103.5(a)(3) because the petitioner asserts that an erroneous decision was made through misapplication of law or policy.

The beneficiary must 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)(l), (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).

In evaluating the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor

[1] Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees, whose services are sought by an employer in the United States.

may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise clearly prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. 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." *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]." *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: Master's degree in Business Administration.
H.5. Training: None required.
H.6. Experience in the job offered: 12 months.
H.7. Alternate field of study: None accepted.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: None accepted.
H.14. Specific skills or other requirements: [Blank].

Part J of the labor certification states that the beneficiary possesses a Master's degree in Business Administration from [redacted] India, completed in 2005. The record contains a copy of the beneficiary's Master's degree in International Business from [redacted][2] The record reflects that the beneficiary also possesses a Bachelor's degree in Business Administration from [redacted], completed in 2003. The record contains a copy of the beneficiary's bachelor's and master's degrees from [redacted] and transcripts for both degrees.

The director's decision denying the petition concludes that the beneficiary's education credentials do not constitute the equivalent of a U.S. master's degree as required for classification as an advanced degree professional.[3] In our decision, dated September 30, 2014, we affirmed the director's decision

[2] We note that the labor certification refers to this degree as a Master's degree in Business Administration; however, the title on the English translation of the beneficiary's degree is "Master of International Business."

[3] The petitioner states that the director only addressed whether the beneficiary possesses the foreign equivalent of a bachelor's degree and not whether the beneficiary possesses the foreign equivalent of a U.S. master's degree. However, the director stated the following: "A search of the Electronic Database for Global Education (EDGE) database, a database created for the evaluation of foreign credentials, states that a Master of Arts in Business Administration from India represents attainment of a level of education comparable to a Bachelor's degree in the United States." This

based upon the conclusion by the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO)[4] regarding the beneficiary's educational credentials. We noted that according to EDGE, the beneficiary's three-year Bachelor of Business Administration degree is comparable to three years of university study in the United States, and the Master of Business Administration degree is comparable to a U.S. bachelor's degree. We also noted several discrepancies and inconsistencies with the educational evaluations submitted. For these reasons, we concluded that the beneficiary does not possess the foreign equivalent of a U.S. master's degree.

We have reviewed the report submitted on motion from the entitled ' ' by . This report contains a horizontal diagram of the years of education in India and provides details of secondary and postsecondary education and the certificates and degrees awarded. We have also reviewed the article submitted on motion, authored by entitled, " " We have reviewed the additional documentation submitted on motion, which will be discussed at greater length below.

The evaluations of the beneficiary's educational credentials in the record are incorporated by reference, and will be discussed below in relation to the assertions raised by the petitioner on motion.

On motion, the petitioner challenges our authority to rely upon EDGE in our conclusion that the beneficiary does not possess the foreign equivalent of a U.S. master's degree. The petitioner cites *Matter of: [redacted]*, NSC (AAO Apr. 28, 2009), an unpublished decision, in which we stated that "we do not consider EDGE absolute or definitive." 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). Furthermore, we indicated in this unpublished decision cited by the petitioner that "every case is different, and the outcomes are driven by facts specific to the case." 2012 WL 9160043, at *7.

On motion, the petitioner has submitted an additional memorandum from Vice President for Operations at the stating that she has reviewed the evaluations initially submitted on appeal, and notes the following. states that EDGE "was not designed as, nor should it be used for, a substitute for actual credential evaluation or in lieu of applying well-developed comparative education methodologies."

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demonstrates that the director also addressed whether the beneficiary's master's degree was the foreign equivalent of a U.S. master's degree.

[4] 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.

[redacted] states that evaluators at [redacted] and other professional evaluators do the following, which she states EDGE cannot do: (1) "review institutional recognition and/ or program availability/ accreditation;" (2) "are trained and experienced in the authentication and verification of foreign documents;" (3) "consider and incorporate issues of comparative curriculum complexity;" and (4) "review the content of particular degree programs offered at specific foreign universities in comparison with similar degree programs offered in the United States."

USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies. In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that we provided a rational explanation for our reliance on information provided by AACRAO to support our 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. *See also Sunshine Rehab Services, Inc*. 2010 WL 3325442 (E.D.Mich. August 20, 2010) (concluding that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in relying on EDGE to reach the conclusion that an alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree).

In [redacted] October 31, 2014 letter, he states that he was the author of the initial EDGE database entry on Indian higher education and that he recommended that the three-year Indian bachelor's degrees plus a two-year Indian Master's degree in Business Administration is comparable to a Master of Business Administration degree in the United States. He states that AACRAO decided to modify his recommendation and that he disagrees with EDGE's new conclusion. He states that "U.S.-educated graduate school applicants typically complete their undergraduate degree in eight regular semesters," whereas "Indian-educated graduate applicants typically complete a three-year bachelor's degree by attending classes year-round with a typical school week consisting of classes from Monday through Saturday." [redacted] also references the article he co-authored with [redacted], entitled "[redacted] which states that "the three-year bachelor's degree contact hours meet or exceed the contact hours spent by a U.S. student during four years of [a] bachelor's degree." The authors also give the recommendation that "a three-year bachelor's degree and a two-year Indian master's degree … should be considered comparable to a U.S. master's degree." *Id.*

After a thorough review of the record on motion, we note that the evaluations submitted reach two main conclusions: (1) that the three years of the beneficiary's bachelor's degree and the first year of the beneficiary's master's degree are equivalent to a U.S. bachelor's degree; and (2) that the second year of the beneficiary's master's degree program alone is equivalent to a U.S. master's degree. The evaluators state that the two degrees combined are the equivalent of a U.S. master's degree, but when the evaluators apportion the credits for each degree, the consensus they reach is that the last year of the beneficiary's master's degree program is alone equivalent to a U.S. master's degree. To support this equivalency, the petitioner cites the fact that some U.S. colleges and universities have one-year accelerated master's degree programs. However, as we noted in our prior decision, the

petitioner has not provided any evidence reflecting that Indian master's degrees are similarly accelerated programs, or that the second year of the beneficiary's master's degree program at was an accelerated course of study.

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 (Comm'r 1988). *See also 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). 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 those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even 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 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

On motion, the petitioner asserts that we based our prior decision on "inconsistencies and discrepancies" in the credential evaluations submitted regarding the grades attributed to the beneficiary's courses and the specific number of credits assigned. The petitioner asserts that despite the different methodologies used by the credential evaluations relied upon by the petitioner in this case, each evaluator reaches the same conclusion and sufficiently demonstrates that the beneficiary's education credentials are equivalent to a U.S. master's degree.

We noted in our prior decision that the other evaluations in the record assigned different grades to the beneficiary's courses. On motion, the record contains a letter from dated October 31, 2014, in which he states that he has reviewed the evaluations in the record and has not found any differences between the U.S. grades he assigned to the beneficiary's courses and the grades assigned by these evaluators. states that in his evaluation he provided two columns for grades, "one for Indian marks and one for U.S. grade equivalents." states that the grades he attributed to the beneficiary are exactly the same as in evaluation. Upon further review of this issue, we see that and did attribute the same grades for the beneficiary's bachelor's degree, but that the grades listed for the master's degree in the first column, which identifies as "Indian marks," contain the same grades listed by as "U.S. grades." We note the additional differences between the grades attributed by and for differ from those of . In October 31, 2014 letter, he states that any inconsistencies between the evaluations in grades attributed to the beneficiary's courses are immaterial to the issue of whether the beneficiary has the equivalent of a U.S. Master's degree in Business Administration. We agree with this assessment and acknowledge that inconsistencies regarding the grades attributed to the beneficiary do not have a direct bearing on whether the beneficiary has a foreign equivalent of a U.S. master's degree. Therefore, we withdraw our conclusions regarding the inconsistencies in the grades attributed to the beneficiary's courses.

In our previous decision, we cited a letter from , Director for Evaluations for dated April 5, 2013, in which she concludes that the beneficiary has completed a minimum of 120 undergraduate U.S. semester credits and a minimum of 30 graduate U.S. semester credits which together are equivalent to a U.S. master's degree. We noted that the evaluation from regarding the beneficiary's bachelor's degree being equivalent to 120 U.S. credits was inconsistent from conclusion that the beneficiary's undergraduate education is equivalent to only 89 U.S. credits. After revisiting this issue on motion, we recognize that April 5, 2013 letter appeared to indicate that the beneficiary's bachelor's degree was equivalent to 120 U.S. credits, but page 2 of her evaluation of the same date further delineated that she viewed the beneficiary's bachelor's degree as being between 90 and 96 U.S. credits. reached the amount of undergraduate credits (121) by adding the 89 credits he attributed from the beneficiary's bachelor's degree and 32 of the beneficiary's master's degree credits that he attributed as being undergraduate credits. Accordingly, we withdraw our specific statement regarding the perceived inconsistency between the conclusions of and regarding the credit equivalency of the beneficiary's bachelor's degree. We note that the evaluations in the record demonstrate the following differences in credits attributed.

Evaluator(s)				
Credits attributed from the beneficiary's bachelor's degree	90	101.5	90-96	89
Credits attributed from the beneficiary's master's degree	58	72.5	60-64	64.5
Total credits	**148**	**174**	**150-160**	**153.5**

We also note that states that a U.S. master's degree generally requires 150 credits. The evaluation by and reaches a total credit amount less than 150 credits, which demonstrates that, by the standards stated by and , at least one evaluation reaches a conclusion that the beneficiary does not have sufficient credits to have the equivalent of a U.S. master's degree. While we conclude that the differences in credits assigned to the beneficiary's courses are not the sole reason for affirming the director's decision and our prior decision, these inconsistencies do not demonstrate that it is more likely than not that the beneficiary has the required degree equivalency. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

As stated above, references the article he co-authored with , entitled

, which states that "the three-year bachelor's degree contact hours meet or exceed the contact hours spent by a U.S. student during four years of [a] bachelor's degree." In this case, the record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. *See* at 11-12 (stating that the Indian system is not based on credits, but is exam based). Thus, transfer credits from India are derived from the number of exams. *Id.* Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.* and state that "Indian-educated graduate applicants typically complete a three-year bachelor's degree by attending classes year-round with a typical school week consisting of classes from Monday through Saturday," but they do not address how this compares with the U.S. system which is based on two hours of individual study time for every one hour in the classroom.

Each of the evaluators in the record assign U.S. credits to the beneficiary's courses, but they do not specifically state how they reach these amounts or how credits may be awarded. We note that the record contains the transcripts of the beneficiary's bachelor's degree which appear to list credit amounts for the courses taken, but these transcripts have not been translated. The transcripts pertaining to the beneficiary's master's degree state that each course has four credits, but the evaluators have not provided any analysis of how these credits equate to credit hours listed in the evaluations, particularly in light of the U.S. system noted above of two hours of study time for each hour in the classroom. Therefore, we find that EDGE's advice regarding an Indian master's degree following a three-year Indian bachelor's degree, coupled with the reasoning noted above, provides a credible basis to demonstrate that the beneficiary's Master's degree in International Business is not the foreign equivalent of a U.S. Master's degree in Business Administration.[6]

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 reconsider our decision, dated September 30, 2014, is granted. Our previous decision is affirmed. The petition remains denied.

[5] *See* http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf, accessed February 9, 2015.

[6] In addition to our review of EDGE, we have consulted with AACRAO regarding the beneficiary's specific educational credentials. The advice from AACRAO is consistent with EDGE, indicating that the beneficiary's Master's degree in International Business completed after her three-year bachelor's degree is equivalent to a U.S. bachelor's degree.