(b)(6)

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

DATE: FEB 18 2015 OFFICE: NEBRASKA 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, Nebraska Service Center, (director) denied the employment-based immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a therapy provider. It seeks to permanently employ the beneficiary in the United States as a occupational therapist. 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).

At issue in this case is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification.

I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL). [1] The priority date of the petition is September 3, 2013.[2]

Part H of the labor certification states that the offered position has the following minimum requirements:

H.4.	Education: Master's degree in occupational therapy.
H.5.	Training: None required.
H.6.	Experience in the job offered: Twelve 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: Masters in Occupational Therapy or foreign equivalent, 1 year of experience in Occupational Therapy required and current California licensure required.

Part J of the labor certification states that the beneficiary possesses a master's degree in occupational therapy from [redacted] completed in 1998 The record contains a copy of the beneficiary's bachelor's Bachelor of Science in Occupational Therapy diploma issued by [redacted] on March 21, 1998, and transcripts reflecting her coursework and internships from 1993 through 1998. The petitioner provided a copy of the beneficiary's license from the California Board of Occupational Therapy.

[1] *See* section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); *see also* 8 C.F.R. § 204.5(a)(2).
[2] The priority date is the date the DOL accepted the labor certification for processing. *See* 8 C.F.R. § 204.5(d).

The record also contains an evaluation of the beneficiary's educational credentials prepared by for on August 20, 2012. The evaluation states that the beneficiary's five-year academic record and resulting bachelor's degree "is equivalent to a master of occupational therapy from a regionally accredited college or university in the United States."

Part K of the labor certification states that the beneficiary had worked for the petitioner as an occupational therapist since April 23, 2012. The labor certification also states that the beneficiary worked as an occupational therapist for in from June 1, 2010, through April 22, 2012. The record contains an experience letter from on company letterhead stating that the company employed the beneficiary as an occupational therapist from June 1, 2010, until April 22, 2012.

In response to the director's Request for Evidence the petitioner submitted an evaluation of the beneficiary's educational credentials prepared by for , on August 29, 2014. The evaluation states that the beneficiary's studies at exceed the requirements of U.S. Masters of Occupational Therapy programs and that the beneficiary's degree is "the equivalent of a master of occupational therapy degree from a regionally accredited college or university in the United States."

The director's October 2, 2014, decision denying the petition noted the two credentials evaluations that had been submitted by the petitioner, but pointed out that the official transcripts reveal that the beneficiary's final (fifth) year at consisted of an "Undergraduate Thesis" and internships; the transcripts do not reveal that the beneficiary completed any graduate-level coursework.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.[3] We consider all pertinent evidence in the record, including new evidence properly submitted on appeal.[4] We may deny a petition that fails to comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision.[5]

[3] *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). Our *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

[4] The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[5] *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).

II. LAW AND ANALYSIS

The Roles of the DOL and USCIS in the Immigrant Visa Process

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. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

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

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[6] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for

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

> the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

> The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
>
> The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

Eligibility for the Classification Sought

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. *See also* 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined as:

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

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

> (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
>
> (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a

professional holding an advanced degree. Further, an "advanced degree" is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

The director 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.[7]

According to EDGE, the beneficiary's Bachelor of Science in Occupational Therapy degree is comparable to a bachelor's degree in the United States. Therefore, the director determined that the petitioner had failed to establish that the beneficiary satisfied the requirements of the labor certification and denied the petition.

On appeal, the petitioner asserts through counsel that the fact that the beneficiary's degree required an "undergraduate thesis" should be considered proof that the beneficiary's degree is above a bachelor's degree. Counsel reasons that "in any regular 4-year baccalaureate degree, a thesis has never been a requirement for graduation as such. Indeed, the fact that the beneficiary submitted any thesis at all is adequate and indeed a clear and convincing proof that she is a professional with an advanced degree." However, undergraduate theses are not at all uncommon and counsel did not cite any authority for his assertion to the contrary. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

It should be noted that length of study does not necessarily translate to an advanced degree determination. For example, an individual could complete five or six years of a bachelor's level education, but the additional coursework, if only at the bachelor's level, will not translate to the equivalent of a bachelor's and a Master's degree. Instead, the additional coursework would

[7] In *Confluence International, 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 beneficiary'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.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the beneficiary'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 required a degree and did not allow for the combination of education and experience.

represent only additional bachelor's level courses. Further, the underlying requirement for entry into a program of study is also an important factor to consider.

EDGE describes a "Master of Arts/Science degree gained in the Philippines as 1-2 years of graduate study usually requiring a thesis."[8] EDGE considers this degree to be the equivalent of a U.S. Master's degree. The petitioner presented no diploma from the Philippines indicating that the beneficiary possesses a Master's degree in Occupational Therapy representing 1-2 years of *graduate* study.

The petitioner asserts that the educational requirements of licensed healthcare professionals should be analyzed based on the state requirements for licensing in the profession. In California, the state in which the beneficiary is licensed, occupational therapy licensing is governed by the Department of Consumer Affairs, California Board of Occupational Therapy. Applicants for an occupational therapist license must complete "the academic requirements of an educational program for occupational therapists or occupational therapy assistants that is approved by the board and accredited by the American Occupational Therapy Association's Accreditation Council for Occupational Therapy Education (ACOTE), or accredited or approved by the American Occupational Therapy Association's (AOTA) predecessor organization, or approved by AOTA's Career Mobility Program." *See* California Business and Professional Code §2570.6(b)(1). Foreign educational credentials must be approved by the National Board for Certification in Occupational Therapy (NBCOT). California Board of Occupational Therapy Regulations, Title 16, Division 39, California Code of Regulations §4110(b). The Occupational Therapy Eligibility Determination (OTED) is used to analyze whether applicants without a U.S. accredited entry-level Master's degree in Occupational Therapy have completed education that meets the eligibility requirements to take the certification exam. While the NBCOT uses the OTED process to verify that graduates of non-U.S. schools have completed education deemed comparable to current U.S. entry-level standards, the NBCOT does not make a determination on the equivalency of a specific foreign degree to a U.S. degree. In some cases, the NBCOT may require additional coursework to satisfy the requirements of U.S. entry-level standards.[9] Therefore, it cannot be concluded that the certification by the NBCOT is a determination that the beneficiary's foreign Bachelor of Science in Occupational Therapy is the foreign equivalent to a U.S. Master's degree in Occupational Therapy. Rather, the NBCOT certification is solely a determination that an individual is qualified to be a registered occupational therapist.

Counsel objected to the director's reliance upon *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988) in weighing the value of the credentials evaluations submitted by the petitioner in comparison to the findings of EDGE. Counsel suggests that *Caron* is not applicable in this case because the case involved a question of whether a position was a specialty occupation requiring a bachelor's degree, while the current case involves no question of whether the position offered requires an advanced degree. However, counsel failed to explain how the process of weighing

[8] *See* http://edge.aacraoorg/country/credential/master-of-artssciences-etc?cid=sin (accessed January 6, 2015).
[9] *See* http://www.nbcot.org/about-the-exam-2 (accessed February 2, 2015).

conflicting advisory opinions varies for different issues before USCIS. The Commissioner's finding in *Caron* stands for the premise that where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. Furthermore, we are entitled to give letters from professors and academic credentials evaluations less weight when they differ from the information provided in EDGE. *Viraj, LLC v. Mayorkas*, 2014 WL 4178338 *4 (C.A.11 Ga. Aug. 25, 2014).

The petitioner submits, on appeal, new credential evaluations performed by and Both evaluators state that the beneficiary possesses the equivalent of a U.S. master's degree based on her bachelor's degree plus five years of work experience. However, the labor certification does not allow an individual to qualify for the position offered with anything less than a U.S. master's or foreign equivalent degree. The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In this matter, Part H, line 4, of the labor certification reflects that a Master's degree is the minimum level of education required. Line 6 reflects that no combination of education or experience is acceptable in the alternative. The beneficiary does not have a "United States master's degree or a foreign equivalent degree," and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. In addition, the beneficiary does not meet the job requirements on the labor certification. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

Further, we note that the employment cited by and was not claimed by the beneficiary on the ETA Form 9089, Application for Permanent Employment Authorization. The beneficiary signed the ETA Form 9089 on July 16, 2014, and only claimed employment for from June 1, 2010, through April 22, 2012.[10] In *Matter of Leung*, 16

[10] The beneficiary also claimed employment for the petitioner since April 23, 2012; however, representations made on the certified ETA Form 9089, which is signed by both the petitioner and the beneficiary under penalty of perjury, clearly indicate that the beneficiary's experience with the petitioner cannot be used to qualify the beneficiary for the certified

I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's labor certification, lessens the credibility of the evidence and facts asserted.

Even if the labor certification allowed for the beneficiary to qualify with a bachelor's degree plus five years of experience, the record does not establish that the beneficiary possessed five years of post-bachelor's experience before the September 3, 2013, priority date. The additional experience letters submitted on appeal document work from September 1998 through September 1999 as a trainee, work from January 3, 2000, through December 30, 2000, as a "volunteer…assigned at the PT-OT Rehabilitation Department," and work from January 2008 through March 2008 in "Job Training as Occupational Therapist." The beneficiary's claimed job training and her experience as a trainee and volunteer may have been performed in an environment related to occupational therapy, but the record does not show that the beneficiary was actually working as an occupational therapist in those positions. Therefore, even if the labor certification allowed for the beneficiary to qualify with a bachelor's degree plus five years of experience, the record does not establish that the beneficiary possessed five years of post-bachelor's experience before the September 3, 2013, priority date. [11]

Furthermore, the fact that both [redacted] and [redacted] refer to the beneficiary's degree as a bachelor's degree further contradicts the two credentials evaluations previously entered into the record. It is incumbent on 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). The petitioner has failed to submit independent objective evidence to overcome the inconsistencies between the first two credentials evaluations and EDGE, nor has the petitioner submitted evidence to overcome the discrepancies between the first two evaluations and the last two evaluations submitted into the record. These unresolved discrepancies cast further doubt on the submitted evidence.

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign

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position. Specifically, the petitioner indicates that questions J.19 and J.20, which ask about experience in an alternate occupation, are not applicable. In response to question J.21, which asks, "Did the alien gain any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested?," the petitioner answered "no." The petitioner specifically indicates in response to question H.6 that 12 months of experience in the job offered is required and in response to question H.10 that experience in an alternate occupation is not acceptable. In general, if the answer to question J.21 is no, then the experience with the employer may be used by the beneficiary to qualify for the proffered position if the position was not substantially comparable and the terms of the ETA Form 9089 at H.10 provide that applicants can qualify through an alternate occupation. Here, the beneficiary indicates in response to question K.1. that her position with the petitioner was as an occupational therapist, and the job duties are the same duties as the position offered. Therefore, the experience gained with the petitioner was in the position offered. According to DOL regulations, therefore, the petitioner cannot rely on this experience for the beneficiary to qualify for the proffered position.

[11] It is also noted that this claimed experience amounts to 31 months of work; which, if combined with the 23 months of work experience that was claimed on the labor certification, would still be less than five years of experience.

equivalent degree) above a baccalaureate as required by the labor certification for classification as an advanced degree professional. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

III. CONCLUSION

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

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.