U.S. Citizenship and Immigration Services

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

MATTER OF G-ITS-, INC.

DATE: NOV. 18, 2015

APPEAL OF NEBRASKA SERVICE CENTER DECISION

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

The Petitioner, a software business, seeks to employ the Beneficiary permanently in the United States as a Computer and Information Systems Manager. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 203(b)(2). The Director, Nebraska Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the U.S. Department of Labor (DOL). The priority date of the petition is October 6, 2011, which is the date the labor certification was accepted for processing by DOL.[1] *See* 8 C.F.R. § 204.5(d).

## I. PROCEDURAL HISTORY

On August 4, 2014, the Petitioner filed the instant petition. On February 13, 2015, the Director issued a request for evidence (RFE) to the Petitioner, asking for further evidence of its ability to pay the proffered wage, specifically for documentation of its ability to pay the wages of all Form I-140 beneficiaries for whom it had filed visa petitions in 2011. On March 6, 2015, the Petitioner responded with additional evidence. On March 20, 2015, the Director found that although the Petitioner had established its ability to pay the proffered wage in 2012 and 2013, it had not done so for 2011. Accordingly, he denied the visa petition.

On April 20, 2015, the Petitioner appealed the Director's decision to this office. We conduct appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact.

[1] The ETA Form 9089 was originally submitted in support of a Form I-140, Petition for Alien Worker, filed by the petitioner on January 24, 2012, which was denied on May 9, 2012. USCIS continues to accept duplicate Forms I-140 in cases where the original labor certification was submitted in support of a previously filed petition during the original labor certification's validity period and the petitioner is filing a new visa petition subsequent to the denial of that petition, so long as the labor certification was not invalidated due to material misrepresentation or fraud relating to the labor certification application.

We consider all pertinent evidence in the record, including new evidence properly submitted on appeal. The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

The Petitioner has appealed the Director's determination that the record does not establish its ability to pay the Beneficiary the proffered wage. For the reasons discussed below, we will affirm the Director's finding that the Petitioner has not demonstrated its ability to pay the Beneficiary the proffered wage. Beyond the decision of the Director, we also find that the record does not demonstrate that the Beneficiary is qualified for the offered position or for classification as an advanced degree professional under section 203(b)(2) of the Act.

## II. ABILITY TO PAY

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

A petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA Form 9089, Application for Permanent Employment Certification, establishes a priority date for any immigrant visa petition later based on the ETA Form 9089, a petitioner must establish that the job offer was realistic as of the priority date and that the offer remains realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. A petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg'l Comm'r 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, U.S. Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wage, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967).

To determine a petitioner's ability to pay the proffered wage, USCIS first examines whether the petitioner was employing the beneficiary as of the date on which the labor certification was accepted for processing by DOL and whether it continues to do so. If the petitioner documents that it has employed the beneficiary at a salary equal to or greater than the proffered wage, that evidence may be considered *prima facie* proof of the petitioner's ability to pay pursuant to 8 C.F.R. § 204.5(g)(2). If the petitioner does not demonstrate that it employed and paid the beneficiary at an amount at least equal to the proffered wage during the required period, USCIS then examines the net income figure reflected on the petitioner's federal income tax returns, without consideration of depreciation or

other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d 873 (E.D. Mich. 2010), *aff'd*, No. 10-1517 (6th Cir. Filed Nov. 10, 2011).[2] If the petitioner's net income during the required time period does not equal or exceed the proffered wage or if when added to any wages paid to the beneficiary, does not equal or exceed the proffered wage, USCIS reviews the petitioner's net current assets.

In cases where neither a petitioner's net income nor its net current assets establish its ability to pay the proffered wage during the required period, USCIS may also consider the overall magnitude of its business activities. *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg'l Comm'r 1967). In assessing the totality of the petitioner's circumstances, USCIS may look at such factors as the number of years it has been in business, its record of growth, the number of individuals it employs, abnormal business expenditures or losses, its reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence it deems relevant.

Where a petitioner has filed multiple petitions for multiple beneficiaries, it must demonstrate that its job offer to each beneficiary is realistic, and that it has the ability to pay the proffered wage to each. *See Matter of Great Wall,* at 144-145; *see also Patel v. Johnson*, 2 F. Supp. 3d 108 (D. Mass. 2014); 8 C.F.R. § 204.5(g)(2). In determining whether a petitioner has established its ability to pay the proffered wage to multiple beneficiaries, USCIS adds together the proffered wages for each beneficiary for each year starting from the priority date of the instant petition, and analyzes the petitioner's ability to pay the combined wages. However, the wages offered to the other beneficiaries are not considered for the period prior to the priority dates of their respective Form I-140 petitions, after the dates any beneficiary obtained lawful permanent residence, or after the dates any Form I-140 petition was withdrawn, revoked, or denied without a pending appeal. In addition, USCIS will not require a petitioner to establish the ability to pay additional beneficiaries for any year that the beneficiary of the instant petition was paid the full proffered wage.

In the present case, the priority date of the visa petition is October 6, 2011. Part G.1. of the ETA Form 9089, Application for Permanent Labor Certification, reflects that the proffered wage in this matter is $181,521.60 per year. To establish its ability to pay in this matter, the Petitioner must establish a continuing ability to pay the proffered annual wage of $181,521.60 to the Beneficiary from the October 6, 2011, priority date through March 6, 2015, the date on which the record before the Director closed with the receipt of the Petitioner's response to the February 13, 2015, RFE. As of that date, the Petitioner's 2013 federal tax return was the most recent tax return available.

The record also reflects that, as of October 6, 2011, the Petitioner had already filed multiple Form I-140 visa petitions that were approved or pending.

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[2] Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. V. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang. v. Thornburgh,* 719 F. Supp. 532 (N.D. Texas 1989); K.*C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In the present case, the Petitioner bases its ability to pay in 2011 on its net current assets and, in 2012 and 2013, on the net current assets of Prospance, Inc. (Prospance), its parent company. To establish its claims, the Petitioner submits its 2011 Form 1120S, U.S. Income Tax Return for an S Corporation; and the 2012 and 2013 Forms 1120S for Prospance. The Petitioner also provides listings of its Form I-140 filings; and Forms W-2, Wage and Tax Statements, issued in 2011.

A. Ability to Pay 2011

The Petitioner's 2011 tax return reports net current assets of $1,636,928.00,[3] which exceed the proffered wage. However, to establish its ability to pay in 2011, the Petitioner must also demonstrate that it had the financial resources to cover the proffered wages of all the beneficiaries for whom it had filed Forms I-140 that were approved or pending as of the October 6, 2011 priority date and thereafter in 2011.

In response to the Director's February 13, 2015, RFE, the Petitioner submitted a listing of 15 beneficiaries for whom, it stated, it had filed Forms I-140 that were approved or "in process" in 2011, contending that it had no obligation to demonstrate its ability to pay the proffered wages of any beneficiaries whose Forms I-140 had subsequently been denied or withdrawn, or who had obtained lawful permanent residence. Based on this construction of its proffered wage obligation, the Petitioner prorated the proffered wages of these 15 beneficiaries from the priority date until the end of 2011 and determined its total proffered wage obligation in 2011 to be $1,517,846.00. It reduced this total by the wages it had paid these individuals in 2011 and arrived at a net proffered wage obligation of $1,092,575.00. As its net current assets of $1,636,928.00 exceed this total, the Petitioner contends that its ability to pay the proffered wage has been established for 2011.

We do not, however, find the Petitioner's calculation of its combined proffered wage obligation for 2011 to be accurate. A review of relevant USCIS databases finds that four of the 15 petitions identified by the Petitioner were not filed until 2012 and that the chart also misidentifies the number of Form I-140 beneficiaries who adjusted status prior to October 6, 2011. Only two of the six beneficiaries listed by the Petitioner as having obtained lawful permanent resident (LPR) status prior to October 6, 2011 are identified in USCIS databases as having adjusted status by that date. These databases also reflect that 10 Form I-140 petitions, identified as having been withdrawn or denied, were either approved or pending as of the priority date.[4] Accordingly, the Petitioner appears to have filed for 27 beneficiaries for whom Forms I-140 were pending or approved as of the October 6, 2011 or thereafter in 2011. The receipt numbers for these filings are as follows:

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[3] According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

[4] Although several of these Form I-140 petitions were later denied or withdrawn by the Petitioner, USCIS records indicate that, as of the October 6, 2011 priority date, they were active petitions.

This office will also not accept the Petitioner's prorating of the proffered wages for its Form I-140 beneficiaries in 2011. We will not consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. Only if the record contains evidence of net income or payment of a beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), e.g., monthly income statements or pay stubs, will we prorate a proffered wage. The Petitioner has not submitted such evidence.

Based on a total of 27 beneficiaries and, for the purposes of issuing this decision, using the proffered wages provided in the charts that the Petitioner submitted in response to the Director's RFE in the present case and that issued in 2012 by the Director, Texas Service Center, for a separate petition filed for this same Beneficiary, we find the combined proffered wages for these individuals to total at least: $3,788,603.00.[5] When we deduct the wages that are reported on the 2011 Forms W-2 that the Petitioner submitted for the record, this total is reduced to $3,196,168.30 (not including the $181,521.60 proffered wage for the Beneficiary), a proffered wage obligation that exceeds the Petitioner's net current assets by $1,559,240.30. Therefore, based on the record before us, we do not find that the Petitioner has established that it had the ability to pay the proffered wage to the beneficiary in 2011.

B. Ability to Pay in 2012

To establish its ability to pay the proffered wage in 2012, the Petitioner has submitted the 2012 consolidated tax return of its parent company, [redacted] While USCIS will not consider the financial resources of entities that have no legal obligation to pay the proffered wage, we note that [redacted] 2012 consolidated tax return reports sufficient information on the Petitioner's financial performance to establish that, in 2012, it had $10,200.00 in net income and $630,467.00 in net current assets.

However, in 2012, USCIS databases reflect that the Petitioner had 37 Forms I-140 pending or approved, not including a prior petition filed on behalf of the Beneficiary. These filings included:

[5] This total does not include proffered wages for two Form I-140 beneficiaries whose wages were not found in the documentation provided by the Petitioner.

Using the proffered wages provided by the Petitioner,[6] we find that, for 2012, the combined proffered wage obligation for the above beneficiaries totaled at least $4,611,241.60, exceeding the Petitioner's net current assets by $3,980,774.60. As the record contains no documentary evidence of any wages paid to these individuals that might decrease the Petitioner's proffered wage obligation to the point where it is covered by net current assets, the record also does not establish the Petitioner's ability to pay the proffered wage in 2012.

C. Ability to Pay 2013

For 2013, USCIS databases indicate that there were 23 beneficiaries for whom the Petitioner had filed Form I-140s that were pending or approved, including:



Without any deduction of the wages paid to these individuals, we have calculated the Petitioner's combined proffered wage obligation in 2013 as being at least $3,200,998.00 (not including the proffered wage of $181,521.00 for the instant beneficiary).[7]

[6] The record does not include proffered wages for eight of the beneficiaries for whom Forms I-140 were pending or approved in 2012.

[7] The proffered wages for two beneficiaries were not found in the financial documentation submitted by the Petitioner for the record.

To establish its ability to pay in 2013, the Petitioner has again submitted its parent company's 2013 federal tax return. However, unlike its 2012 return, [redacted] consolidated Form 1120S for 2013 does not break out the Petitioner's financial information and cannot, therefore, be used to establish its ability to pay the proffered wage. A petitioner is a separate and distinct legal entity from its owners and shareholders, and USCIS may not "pierce the corporate veil" and look to the assets of a corporation's owner to satisfy a corporation's ability to pay the proffered wage. *See Matter of Tessel*, 17 I&N Dec. 631 (Act. Assoc. Comm. 1980); *see Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980); *Matter of M*, 8 I&N Dec. 24 (BIA 1958). The record contains no other evidence of the Petitioner's financial resources. Therefore, it does not demonstrate the Petitioner's ability to pay in 2013.

For the above reasons, we do not find the Petitioner to have established a continuing ability to pay the proffered wage as of the visa petition's October 6, 2011, priority date. Accordingly, we will affirm the Director's denial of the visa petition on this basis.

Beyond the decision of the Director, we also find that the record does not establish the Beneficiary's qualifications for the offered position or that he is eligible for classification under section 203(b)(2) of the Act.

## III. BENEFICIARY QUALIFICATIONS

### A. The Roles of DOL and USCIS in the Immigrant Visa Process

At the outset, it is important to identify the respective roles of DOL and USCIS in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by DOL. 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 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).[8] *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 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.*

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

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

> [T]he 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 DOL's responsibility to determine whether there are qualified U.S. workers available to perform the duties of an offered position, and whether the employment of a beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine whether the job offer to a beneficiary is a realistic one, whether that beneficiary qualifies for the offered position, and whether an offered position and a beneficiary are eligible for the requested immigrant visa classification.

B. Beneficiary's Eligibility for Offered Position

The Petitioner is seeking classification of the Beneficiary as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2). The regulation at 8 C.F.R. § 204.5(k)(2) defines an advanced degree 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 . . . .

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, a petition for an advanced degree professional must establish that a beneficiary possesses no less than 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.

Moreover, a petitioner seeking to employ a beneficiary as an advanced degree professional must demonstrate that the beneficiary satisfies all of the educational, training, experience and any other requirements of the offered position set forth on the labor certification as of the date it was filed with DOL. 8 C.F.R. § 103.2(b)(1). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The offered position in the present case is that of a Computer and Information Systems Manager, for which Part H. of the labor certification lists the following minimum requirements:

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| H.4. | Education: Bachelor's. |
| H.4-B. | Major field of study: Computer Science. |
| H.5. | Training: None required. |
| H.6. | Experience in the job offered: Required. |
| H.6-A. | Number of months experience required: 60 months. |
| H.7. | Alternate field of study: Accepted. |
| H.7-A. | Major field of alternate study: Engineering, math, business administration or related field of study. |
| H.8. | Alternate combination of education and experience: None accepted. |
| H.9. | Foreign educational equivalent: Accepted. |
| H.10. | Experience in an alternate occupation: Accepted. |
| H.10-A. | Number of months experience required: 60 months. |
| H.10-B. | Acceptable alternate occupation: Programmer, analyst, engineer, developer, administrator, lead, consultant. |
| H.14. | Specific skills or other requirements: Any suitable combination of training, education and experience is acceptable. |

To satisfy the requirements of the labor certification in the present case, the Beneficiary must possess a U.S. Bachelor's degree or a foreign equivalent degree in Computer Science, Engineering, Mathematics, Business Administration or a related field of study, and have five years of progressive experience as a computer and information systems manager, a programmer, analyst, engineer, developer, administrator, lead, or consultant.

Parts J.11. through J.14. of the ETA Form 9089 reflect that the Beneficiary holds a 2003 Bachelor of Engineering degree from in India. Accordingly, the Petitioner must demonstrate that the Beneficiary's Indian degree is the foreign equivalent degree of a U.S. Bachelor's degree.

To establish that the Beneficiary's degree satisfies the requirements of the labor certification, the Petitioner has submitted a copy of the Beneficiary's Bachelor of Engineering (Electrical) degree certificate issued by his academic transcript from which reflects that he completed the requirements for his four-year degree in June 2002; and a credentials evaluation prepared by In his report, concludes by completing a bachelor's-level program in Electrical Engineering at (India), the Beneficiary has "attained the equivalent of a Bachelor of Science Degree in Electrical Engineering from an accredited US college or university."

In considering the Beneficiary's Indian degree, we have reviewed the All India Council for Technical Education (AICTE) website at http://www.aicte-india.org/ for information concerning the institution where the Beneficiary received his education and which is affiliated with [9] The AICTE was established in November 1945 as a "national level Apex Advisory Body to conduct survey[s] on the facilities on technical education and to promote development in the country in a coordinated and integrated manner." *See* http://www.aicte-india.org/aboutus.htm (accessed November 3, 2015). It has the "statutory authority for planning, formulation and maintenance of norms and standards, quality assurance through accreditation, funding in priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring coordinated and integrated development and management of technical education in the country." *Id.*

In the present case, the AICTE website reports that the only undergraduate degree program at that has been accredited by India's National Board of Accreditation (NBA) is that in Chemical Engineering and, then only for a three year period that began on July 27, 2006. *See* http://www.nbaind.org/Files/AccreditedPrograms.aspx. (accessed November 3, 2015). Therefore, while we note that the Beneficiary's degree certificate was issued by which is recognized by the in India, we do not find the record to establish that his degree was earned at an accredited educational institution or through an accredited academic program. Absent accreditation, which ensures the foundation of norms and standards, the educational value of an Indian institution or program cannot be properly assessed. Therefore, although we note the conclusions reached by in his evaluation, we do not find the Beneficiary's electrical engineering degree to be the foreign equivalent of a U.S. baccalaureate degree. Credentials evaluations are used by USCIS as advisory opinions only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.* 19 I&N Dec. 817 (Comm'r 1988).

Part K. of the ETA Form 9089 reflects that the Beneficiary claimed the following employment experience as of the date the labor certification was filed:

- Senior SAP Basis Administrator, from February 14, 2011, until October 6, 2011 (the date the labor certification was filed).

[9] Until 2004,

Duties: Install/upgrade SAP products/infrastructure. Perform DB2 and transaction tuning. Install and document all interfaces with SAP systems. Document policies/procedures including SAP system backup/recovery, configuration, performance, spool, batchjobs, patch.

- Senior SAP Basis Consultant, [redacted] from March 5, 2007, until February 14, 2011.

  Duties: Install/[u]pgrade SAP products/infrastructure. Implement policies and procedures including SAP system backup/recovery, configuration, performance, spool, batchjobs. Database tuning and apply System patches. Project planning and implementation.

- Senior SAP Basis Consultant, [redacted] from June 15, 2006, until February 28, 2007.

  Duties: Install/upgrade SAP products/infrastructure. Implement policies and procedures including SAP system backup/recovery, configuration. Oracle SQL/Unix performance tuning. SAP client consulting and provide solutions.

- Senior SAP Basis Consultant, [redacted] from May 1, 2005, until June 15, 2006.

  Duties: Install/upgrade SAP products/infrastructure. Implement policies and procedures including SAP system backup/recovery, configuration, performance, batchjobs. SAP client consulting and provide solutions.

- Senior SAP Basis Consultant, [redacted] from July 1, 2002, until April 1, 2005.

  Duties: Install/upgrade SAP products/infrastructure. Implement policies and procedures including SAP system backup/recovery, configuration, performance, spool, batchjobs. Database tuning and apply System patches.

We will not, however, accept the above as a reliable record of the beneficiary's employment history.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) states:

> Any requirements of training or experience for skilled workers, professionals or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

An April 22, 2014, letter from [redacted] Senior SAP Basis Administrator at [redacted] and a December 29, 2010, appointment letter signed by [redacted] Human Resources Generalist/Senior IT Recruiter at [redacted] support the Beneficiary's assertions of having been employed there as a Senior SAP Basis Administrator. However, the Beneficiary's claims of

having worked under the title of Senior SAP Basis Consultant for are not similarly corroborated. Instead, an April 23, 2014, statement signed by President of indicates that the Beneficiary worked for his company as a Programmer Analyst from March 5, 2007 until February 14, 2011.[10] April 18, May 18, and October 15, 2005, letters signed by President of also indicate that the Beneficiary's title while employed at was that of Programmer Analyst, not Senior SAP Basis Consultant. Further, the record contains a 2007 labor certification previously filed by on behalf of the Beneficiary in which the Beneficiary indicates that his job title at was Software Engineer and that at , he worked as a Consultant/Programmer Analyst.

While we acknowledge that the titles of SAP Basis Consultant and Software Engineer may be used interchangeably and that Programmer Analysts may also perform the duties of SAP Basis Consultants, the inconsistencies between the Beneficiary's accounts of his employment for are not limited to his job titles. The Beneficiary's description of the duties he performed for and in the 2007 labor certification and that he provided in the instant labor certification appear to reflect different employment.

In the 2007 labor certification, the Beneficiary described his employment at both and as follows:

> Analyze science, engineering, business and all other data processing problems for application to electronic data, processing systems. Analyze user requirements, procedures and problems to automate or improve existing systems and review computer system capabilities, workflow and scheduling limitations. Work using various technologies.

The above duties, which describe the work performed by computer systems analysts, are not those the Beneficiary indicates he performed for and in the current labor certification, i.e., the installation and upgrading of SAP products and infrastructure. Neither are they the duties described by in his April 23, 2014 statement, nor those indicated by in his letters of May 18 and October 15, 2005. Accordingly, we do not find the record to establish the Beneficiary's employment experience with and Doubt cast on any aspect of a petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

We also find inconsistencies in the dates of the Beneficiary's employment with The Beneficiary indicates in the instant labor certification that he was employed by from July 1, 2002, until April 1, 2005. However, a May 1, 2005,

[10] We note that the language used by in his April 23, 2014, statement to describe the Beneficiary's duties is virtually identical to that found in April 22, 2014, letter.

statement from a Senior SAP Consultant, indicates that the Beneficiary was employed by from July 8, 2002, to November 13, 2002, and was "designated as SAP Basis consultant at the end of his term." An undated statement from Head, HR and Administration at also states that the Beneficiary worked as an SAP ABAP Consultant during the period July 8, 2002, to November 13, 2002. However, a Service Certificate issued by reflects that the Beneficiary's employment began on November 14, 2002, and ended on April 18, 2005, which, again, differs from the time period indicated by the Beneficiary in the current labor certification. As a result, the record does not establish the period during which the Beneficiary was employed by

Moreover, as previously indicated, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) requires that letters submitted in support of a beneficiary's work experience come from his or her "current or prior employer(s) or trainer(s)" and "include . . . a specific description of the duties performed . . . or the training received." However, neither who signed the letter describing the Beneficiary's duties at nor who signed the letter in support of the Beneficiary's claim of employment with appear to be a former employer or trainer of the Beneficiary. does not claim to have trained or supervised the Beneficiary, but, instead, indicates that he is a Senior SAP Basis Administrator, which is the same position as that held by the Beneficiary when he worked at Further, the copy of the appointment letter submitted for the record indicates that the Beneficiary will be working under the direction of the company's Manager, Basis Administration, not also makes no claim to have been the Beneficiary's trainer or supervisor, and his May 1, 2005 statement indicates that he is a Senior SAP Consultant at not its employee. Accordingly, these letters do not satisfy the requirements at 8 C.F.R. § 204.5(g)(1) and, therefore, no do not establish the Beneficiary's experience for the periods claimed.

Further the June 15, 2006, experience letter signed by Director does not describe the duties the Beneficiary performed while he was employed at The accompanying April 19, 2005 appointment letter and appointment notice issued by also contain no description of the Beneficiary's duties. As a result, Director letter fails to establish that the Beneficiary worked as an SAP Basis Consultant for from May 1, 2005, until June 15, 2006.

The record contains inconsistent descriptions of the Beneficiary's titles and duties for and and differing dates for his employment with Moreover, the Beneficiary's employment at is not supported by letters of experience that comply with the requirements of the regulation at 8 C.F.R. § 204.5(g)(1). Therefore, it does not demonstrate that the Beneficiary has the employment experience required by the labor certification. *Matter of Ho*, at 591-592.

In summary, the record does not establish that the Beneficiary meets the educational or experience requirements set forth in Part H. of the labor certification. Accordingly, he is not eligible for the offered position of Computer and Information Systems Manager, and we find that the visa petition must be denied for this reason as well.

C. Beneficiary's Eligibility for Classification as Advanced Degree Professional

The record does not establish that the Beneficiary holds the U.S. Bachelor's degree or foreign equivalent degree required by the labor certification or that he has the five years of progressive experience, that, when combined with a U.S. baccalaureate degree or a foreign equivalent degree, would provide him with the equivalent of a Master's degree. Therefore, it does not demonstrate that the Beneficiary is eligible for classification as an advanced degree professional under section 203(b) of the Act.

For the reasons discussed above, we do not find the record to establish that the Beneficiary in this matter has the advanced degree required by the terms of the labor certification and the requested preference classification. In visa petition proceedings, it is a 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). Accordingly, we will dismiss the appeal.

**ORDER:** The appeal is dismissed.

Cite as *Matter of G-ITS-, Inc.*, ID# 14734 (AAO Nov. 18, 2015)