U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF F-C CORP.

DATE: OCT. 15, 2015

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a specialty chemical manufacturer, seeks to permanently employ the Beneficiary in the United States as an SAP Applications and Systems Administrator under the immigrant classification of advanced degree professional. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The Director, Texas Service Center, denied the petition. The matter is now before us on appeal. The appeal will be dismissed.

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 May 1, 2014.[2]

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

H.4. Education: Bachelor's degree in Computer Science.
H.5. Training: None required.
H.6. Experience in the job offered: 60 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. Technical expertise in Microsoft SharePoint 2007 in addition to a demonstrated knowledge of systems installation, configuration & integration in the following areas: Architecture and Topology, Central Admin, InfoPath Services & Feature and Solutions Management. The selected applicant is expected to have strong technical skills in Microsoft SQL Server 2005/2008 database administration, SQL Reporting Services & Report Server/Report Manager, Microsoft CRM Dynamics 4.0, IIS Administration, Management of Virtual

[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).

directories and web services and Windows 2003 and 2008 Administration. Experience with third party SharePoint extensions – i.e. AvePoint, Quest Admin, Nintex Workflow, etc, Microsoft Project/Portfolio Server Administration & Configuration, Windows Workflow Foundations, .NET Frameworks, ITIL and Change Management methodologies, Rights Management Server Administration, Citrix Server XenApp, Oracle Administration is preferred.

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.

Part J of the labor certification states that the Beneficiary possesses a Bachelor's degree in Computer Science/Management Information Systems from [redacted] India, completed in 1990. The record contains a copy of the Beneficiary's Bachelor of Commerce degree from [redacted]

The record contains an evaluation of the Beneficiary's educational credentials prepared by [redacted] The evaluation considers the Beneficiary's combined education and work experience. He references the Beneficiary's three years of study for his Bachelor of Commerce degree, which he states is "similar . . . to the completion of three years of academic study towards a Bachelor of Science Degree from an accredited institution in the United States." He concludes that the Beneficiary's Bachelor of Commerce degree from [redacted] coupled with his six years and one month of employment experience in Computer Science from the dates of June 1998 to February 2005 with three different employers, indicates that the Beneficiary has "satisfied similar requirements to the completion of a Bachelor of Science Degree in Management Information Systems from an accredited institution of tertiary education in the United States."

The record also contains evaluations of the Beneficiary's bachelor's degree from [redacted] one by [redacted] regarding the Beneficiary's educational equivalency alone, and a separate evaluation by [redacted] regarding the Beneficiary's degree and work experience equivalency. [redacted] concludes that the Beneficiary's three-year Indian bachelor's degree is the equivalent of "three years of undergraduate study in Business Administration at a regionally accredited college or university in the United States." [redacted] concludes that the Beneficiary's foreign bachelor's degree and his 21 years of progressively responsible work experience taken together are equivalent to a "U.S. degree of Bachelor of Information Technology awarded by a regionally accredited college or university in the United States." None of the evaluations submitted conclude that the Beneficiary has the equivalent of a U.S. bachelor's degree based on his three-year foreign degree alone without consideration of his experience.

The director's decision denying the petition concludes that the Beneficiary does not possess a single degree that is the foreign equivalent of a U.S. bachelor's degree to meet the definition of an advanced degree professional.

On appeal, the Petitioner states that the Beneficiary's bachelor's degree and over 21 years of progressively responsible work experience in the field of information technology demonstrates that he has the foreign degree equivalent of a U.S. bachelor's degree. The Petitioner further states that the director erred in holding that the regulation at 8 C.F.R. § 204.5(k)(2) for advanced degree professionals requires that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. bachelor's degree.

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 upon 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]

II. LAW AND ANALYSIS

A. 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-
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> > (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
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> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

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[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). The AAO's *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).

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 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,

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

> 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).
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> 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.

B. 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
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> (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.

When the beneficiary relies on a bachelor's degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor's (or foreign equivalent) degree. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the legacy INS responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990) and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the

> legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. Where the analysis of the beneficiary's credentials relies on work experience alone, a combination of education and experience, or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[7] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" of a United States baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2).

The beneficiary's degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree." For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30706 (July 5, 1991).[8]

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[7] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

[8] *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, diploma, certificate or similar award from a college, university,

In addition, a three-year bachelor's degree will generally not be considered to be the "foreign equivalent" of a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).[9] *See Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree); *see also Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D. Mich. August 20, 2010) (the beneficiary's three-year bachelor's degree was not the foreign equivalent of a U.S. bachelor's degree).

In the instant case, the Petitioner relies on the Beneficiary's three-year Bachelor of Commerce degree from India, and his 21 years of work experience as being equivalent to a U.S. bachelor's degree.

As is noted above, the record contains several evaluations of the Beneficiary's educational credentials. The evaluation concludes that the Beneficiary's Bachelor of Commerce degree from , together with his six years and one month of employment experience in Computer Science, indicates that the Beneficiary has attained the equivalent of a U.S. Bachelor of Science degree in Management Information Systems. The evaluation concludes that the Beneficiary's bachelor's degree alone is the equivalent of "three years of undergraduate study in Business Administration at a regionally accredited college or university in the United States." The evaluation concludes that the Beneficiary's bachelor's degree and his 21 years of progressively responsible work experience are equivalent to a "U.S. degree of Bachelor of Information Technology awarded by a regionally accredited college or university in the United States."[10] Again, however, none determine that his three-year foreign bachelor's degree is the foreign equivalent to a U.S. bachelor's degree.

We have 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

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school or other institution of learning relating to the area of exceptional ability").

[9] In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

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

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.[11]

According to EDGE, the Beneficiary's three-year Bachelor of Commerce degree is comparable to three years of university study in the United States. EDGE reaches the same assessment of the Beneficiary's education as the evaluations that the petitioner submitted.

Therefore, following a review of the beneficiary's education and the evaluations submitted, as well as the regulations at 8 C.F.R. §§ 204.5(k)(2) and 204.5(k)(3)(i)(B), and the legislative history, explained above, the evidence in the record on appeal is not sufficient to establish that the Beneficiary possesses the foreign equivalent of a U.S. bachelor's degree.

After reviewing all of the evidence in the record, it is concluded that the Petitioner has not established that the Beneficiary possessed at least 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 to meet the terms of the labor certification or to qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

C. The Minimum Requirements of the Offered Position

The Petitioner must also establish that the Beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 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 beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of

[11] 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. v. USCIS,* 2010 WL 3325442 (E.D. Mich. August 20, 2010), 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.

terms used to describe the requirements of a job in a labor certification by "examin[ing] 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]" even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires a Bachelor's degree in Computer Science or a foreign equivalent degree and 60 months of experience in the job offered, and the skills in H.14.

For the reasons explained above, the Petitioner has not established that the Beneficiary possesses a single degree that is determined to be the foreign equivalent of a U.S. Bachelor's degree in Computer Science.

In addition, beyond the decision of the director, the Petitioner has not established that the Beneficiary has 60 months of experience in the job offered, as an SAP Applications and Systems Administrator, or the required skills in H.14. to meet the experience requirements for the offered position. An application or petition that does not comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor 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).

The Beneficiary's claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the Beneficiary's experience. *See* 8 C.F.R. § 204.5(g)(1). Part K of the labor certification states the Beneficiary's prior claimed employment experience as follows:

- As a SharePoint Administrator/Architect for [redacted] New Jersey from October 1, 2009 to May 12, 2012;
- As a SharePoint Analyst/Architect for [redacted] Pennsylvania, from January 1, 2009 to September 30, 2009;
- As a Senior SharePoint Developer for [redacted] New Jersey from

March 1, 2005 to December 1, 2008;
- As a Senior Developer for [redacted] in [redacted] Malaysia from March 1, 2001 to February 1, 2005.

The record contains letters from the following employers stating that the Beneficiary was employed as follows:

- As a Programmer Analyst for [redacted] from February 2006 to May 2012;
- As a Senior Software Engineer for [redacted] from March 1, 2005 through at least December 1, 2005, the date of the letter;
- As a Programmer for [redacted] from March 27, 2001 to February 28, 2005;
- As a Software Engineer for [redacted] from July 2000 to October 2000;
- As a Software Engineer for [redacted] from June 1998 to June 2000;
- As a Software Programmer for [redacted] from January 10, 1996 to June 7, 1998;
- [redacted], indicating he worked as a Software Engineer from October 1992 to December 20, 1995.

We note the following discrepancies regarding the Beneficiary's experience. The labor certification indicates the Beneficiary was employed as a SharePoint Administrator/Architect for [redacted] New Jersey from October 1, 2009 to May 12, 2012. An earlier filed labor certification (ETA Case Number [redacted] states the Beneficiary was employed for [redacted] as a Programmer Analyst from October 2009 onward, and prior to that from February 7, 2006 to February 3, 2006, and March 1, 2005 to February 3, 2006. The dates on the two labor certifications and the experience letter all conflict. The letter submitted indicated that he was employed at [redacted] from February 2006 to May 2012. Doubt cast on any aspect of the petitioner's evidence 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, 591-592 (BIA 1988). 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. *Id.*

The labor certification states the Beneficiary was employed as a SharePoint Analyst/Architect for [redacted] Pennsylvania, from January 1, 2009 to September 30, 2009. However, the earlier labor certification states that this position was from March 30, 2009 to August 30, 2009, and the record does not contain an experience letter from this employer to verify this claimed employment. These dates conflict with the dates of employment in the letter from [redacted] The petitioner must resolve any inconsistencies in the record by independent objective evidence. *Id.*

We note the following additional discrepancies related to the Beneficiary's [redacted] claimed employment:

- The Beneficiary's resume states that he was working in [redacted] PA for [redacted] from September 2008 to December 2008 during the time he was allegedly working for [redacted] in New Jersey.
- The Beneficiary's resume states that he worked as a Senior Developer at [redacted] from September 2007 to September 2008; as a Senior Developer for [redacted] from March 2007 to September 2007; as a Senior Lead Developer from August 2006 to March 2007; and as a Senior Developer for [redacted] North Carolina from March 2005 to August 2006. Each of these periods of employment conflict with the employment listed on the current labor certification.

It is unclear from the evidence before us the basis for the conflicts in the claimed employment, which may reflect assigned contract locations. However, 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. at 591-592.

Further, the experience letters in the record do not demonstrate that the Beneficiary has the following specific skills as required in Part H.14 of the labor certification:

> SQL Reporting Services & Report Server/Report Manager, Microsoft CRM Dynamics 4.0, IIS Administration, Management of Virtual directories and web services and Windows 2003 and 2008 Administration. Experience with third party SharePoint extensions – i.e. AvePoint, Quest Admin, Nintex Workflow, etc, Microsoft Project/Portfolio Server Administration & Configuration, Windows Workflow Foundations, ITIL and Change Management methodologies, Rights Management Server Administration, and Citrix Server XenApp.

In any further filings, the Petitioner must demonstrate that the Beneficiary meets the specific requirements in Part H.14 of the labor certification and resolve all of the conflicting dates of claimed employment with independent objective evidence, such as supported by records of pay or W-2 evidence to verify the Beneficiary's dates of employment and claimed employers.

The evidence in the record does not establish that the Beneficiary possessed the required experience set forth on the labor certification by the priority date. Therefore, the Petitioner has not established that the Beneficiary possessed the minimum education and experience requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

III. CONCLUSION

In summary, the Petitioner has not established 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. In addition, the Petitioner has not demonstrated that the Beneficiary meets the experience requirements of the labor certification. 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.

Cite as *Matter of F-C Corp.*, ID# 13953 (AAO Oct. 15, 2015)