



**U.S. Citizenship
and Immigration
Services**

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

(b)(6)

MATTER OF [REDACTED]

DATE: DEC. 30, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a public school district, seeks to employ the Beneficiary as a high school math teacher.¹ It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This category allows a U.S. employer to sponsor a professional with an advanced degree or its equivalent for lawful permanent resident status.

The Director, Texas Service Center, denied the petition. The Director concluded that the record did not establish that the Beneficiary has the educational qualifications required for the offered position.

The matter is now before us on appeal. The Petitioner claims that the Beneficiary has the equivalent of the required degree based on a combination of education and therefore meets the requirements for the offered job. However, as is discussed below, the record does not reflect that the requirements of the offered position can be met with a combination of educational credentials such as that possessed by the Beneficiary.

Upon *de novo* review, we will dismiss the appeal.

I. LAW AND ANALYSIS

A. USCIS' Role in the Employment-Based Immigration Process

Employment-based immigration is generally a three-step process. First, a U.S. employer obtains a certified ETA Form 9089, Application for Permanent Employment Certification (labor certification), from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). Next, the U.S. employer files Form I-140 with U.S. Immigration and Citizenship Services (USCIS). *See* section 204 of the Act. If the Form I-140, Immigrant Petition for Alien

¹ The Form I-140, Immigrant Petition for Alien Worker, identifies the offered position as "secondary math teacher." But we will refer to the position as "high school math teacher," the title stated on the accompanying ETA Form 9089, Application for Permanent Employment Certification (labor certification).

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Worker, is approved, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

By approving the labor certification, the DOL certified that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position of high school math teacher in the area of intended employment. *See* section 212(a)(5)(A)(i)(I) of the Act. The DOL also certified that the employment of a foreign national in the position will not adversely affect the wages and working conditions of domestic workers similarly employed. *See* section 212(a)(5)(A)(i)(II).

In these proceedings, we must determine whether the Beneficiary meets the requirements of the offered position certified by the DOL. *See, e.g., Tongatapu Woodcraft Haw., Ltd. v Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984) (holding that the immigration service “makes its own determination of the alien’s entitlement to [the requested] preference status”).

B. The Beneficiary’s Educational Qualifications

Here, the Petitioner is requesting classification of the Beneficiary as a member of the professions holding an advanced degree. *See* section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2); *see also* 8 C.F.R. § 204.5(k)(1). Such a petition must be accompanied by a valid labor certification which “must demonstrate that the job requires a professional holding an advanced degree or its equivalent.” 8 C.F.R. § 204.5(k)(4)(i). The term “advanced degree” means “any United States academic or professional degree or a foreign equivalent degree above that of a 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.” 8 C.F.R. § 204.5(k)(2).

In addition, the beneficiary must possess an advanced degree, *see* 8 C.F.R. § 204.5(k)(3), and must also possess all of the education, training, and experience specified on an accompanying labor certification by a petition’s priority date. 8 C.F.R. §§ 103.2(b)(1), (12); *see also Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971).

In this case, the petition’s priority date is March 27, 2014. This is the date the DOL accepted the accompanying labor certification application for processing. *See* 8 C.F.R. § 204.5(d) (describing how to determine a petition’s priority date).

The labor certification states the minimum requirements of the offered position of high school math teacher as a U.S. master’s degree or a foreign equivalent degree in mathematics or a related field. The labor certification states that an alternate combination of education and experience is unacceptable.

The labor certification also states that the offered position does not require any experience. Part H. 14 of the labor certification, however, states that candidates for the offered position “[m]ust possess

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or be eligible for State of North Carolina Teaching license with endorsement in Mathematics.”

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

Here, the plain language of the labor certification clearly states that the offered position requires, at a minimum, a U.S. master’s degree or foreign equivalent degree in mathematics or a related field. At issue is whether the Beneficiary has the required degree.

The Beneficiary attested on the labor certification to his receipt of a master’s degree in mathematics from [REDACTED] India, in 1974. The record contains a copy of a master of science diploma in mathematics from the university, indicating the Beneficiary’s attainment of the degree in April 1974.

The record also contains evidence of the Beneficiary’s possession of two other degrees. Copies of diplomas from [REDACTED] indicate the Beneficiary’s completion of a bachelor of science degree in 1971 and a bachelor of education degree in 1976. Marks memoranda from the university indicate that the Beneficiary studied 3 years for his bachelor of science degree, 2 years for his master of science degree, and 1 year for his bachelor of education degree.

The Petitioner initially submitted an evaluation of the Beneficiary’s foreign educational credentials from [REDACTED]. The evaluation concluded that the Beneficiary possesses the equivalent of a U.S. bachelor of education degree and a U.S. master’s degree in mathematics. In a request for evidence (RFE), the Director questioned the evaluation’s conclusion. He contended that a 3-year bachelor’s degree followed by a 2-year master’s degree in India typically equates to a U.S. bachelor’s degree, not a U.S. master’s degree.

USCIS may reject an expert opinion or afford it less evidentiary weight if it conflicts with evidence of record or “is in any way questionable.” *Matter of Caron Int’l, Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988); see also *Matter of D-R-*, 25 I&N Dec. 445, 460 n.13 (BIA 2011) (noting that expert testimony may receive different evidentiary weight depending on an expert’s qualifications and the relevance, reliability, and probative value of the testimony).

The Petitioner asserts that the Director lacked justification to question the evaluation. But the record indicates that the conclusory nature of the evaluation warranted the RFE. After reciting the major fields and lengths of the Beneficiary’s university studies, the evaluation states: “The content of [the Beneficiary’s] aforementioned post-secondary education compares to a U.S.A. undergraduate major in education with a specialization in teaching mathematics and physical science and a graduate major in mathematics.” The evaluation does not discuss the U.S. equivalencies of the three individual

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university programs completed by the Beneficiary or otherwise explain how his three foreign degrees equate to a U.S. master's degree in mathematics.

In response to the Director's RFE, the Petitioner submitted a revised [REDACTED] evaluation of the Beneficiary's foreign education credentials. The revised evaluation states that the combination of the Beneficiary's 1971 bachelor of science degree and his 1976 bachelor of education degree equates to a U.S. bachelor of secondary education degree. The revised evaluation also states that the Beneficiary's 1974 master of science degree equates to a U.S. master's degree in mathematics, but does not discuss the entry requirements for this degree program.

The revised evaluation claims support from the Electronic Database for Global Education (EDGE), an online tool that federal courts have found to be a reliable, peer-reviewed source of foreign educational equivalencies. *See, e.g., Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (holding that USCIS may discount letters and evaluations submitted by a petitioner if they differ from reports in EDGE, which is "a respected source of information").²

The revised evaluation notes EDGE's report that a 1-year bachelor of education degree following a 3-year baccalaureate degree in India is comparable to a U.S. bachelor's degree. Thus, EDGE supports the revised evaluation's finding that the combination of the Beneficiary's bachelor's degrees equates to a U.S. bachelor's degree in education.

But EDGE does not support the revised evaluation's ultimate conclusion that the Beneficiary possesses the foreign equivalent of a U.S. master's degree in mathematics. Rather, EDGE reports that a 2-year master of science degree following a 3-year baccalaureate degree in India equates to only a U.S. bachelor's degree.

Here, the record indicates that the Beneficiary earned his master's degree immediately after the 3-year bachelor's degree and before earning his education degree. As noted above, the completion of the master of science degree, which requires only a 3-year degree for entry into the program, is equivalent to completion of a U.S. bachelor's degree. The 1-year bachelor of education degree that the Beneficiary next completed is also deemed equivalent to a U.S. bachelor's degree. Even if the Beneficiary had completed 4 years of education (3-year bachelor of science degree and 1-year bachelor of education degree) before entering the master's degree program, it would not elevate the resulting degree, which remains equivalent to a U.S. bachelor's degree based on the program entry requirements, regardless of the amount of education completed by the Beneficiary before entering the program. As such, the record demonstrates that the Beneficiary has the equivalent of a bachelor of science degree and a bachelor of education degree. However, the record does not establish that

² EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), a "non-profit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." *See* AACRAO, at <http://www4.aacrao.org/centennial/about.htm> (accessed Dec. 7, 2016).

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any of the Beneficiary's degrees can be deemed equivalent to a U.S. master's degree, as is required by the labor certification.³

On appeal, the Petitioner submits three additional evaluations of the Beneficiary's foreign educational credentials. Like the revised evaluation submitted with the RFE response, the additional evaluations conclude that the Beneficiary possesses at least the equivalent of a U.S. master's degree in mathematics.⁴ But none of the evaluations address EDGE's opinion that a 2-year Indian master of science degree, requiring only a 3-year bachelor's degree for entry, does not equate to a U.S. master's degree. The evaluations do not explain how the Beneficiary's foreign master's degree, which only requires a 3-year bachelor's degree for entry, equates to a U.S. master's degree in mathematics or a related field as specified on the accompanying labor certification.

A petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act; 8 U.S.C. § 1361. The Petitioner must therefore explain how the Beneficiary's foreign master's degree equates to a U.S. master's degree in mathematics or a related field. Here, it has not done so. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) (requiring a petitioner to resolve inconsistencies of record by independent, objective evidence).

The Petitioner cites two 2007 decisions in which we found 2-year Indian master's degrees to equate to U.S. master's degrees. Both of these decisions, however, are non-precedential. We therefore need not follow their holdings in this matter. *See* 8 C.F.R. § 103.3(c) (stating that only precedent decisions bind USCIS employees in the administration of the Act).⁵

Moreover, as the Petitioner acknowledges, we reopened one of the cited cases on our own motion and reversed the decision. Thus, that case does not support the Petitioner's position. There, evaluations initially persuaded us that the beneficiary's 2-year master's degree following a 3-year bachelor's degree in India equated to a U.S. master's degree in physics. Upon reopening, however, we found the evaluations' conclusions inconsistent with information from AACRAO, which the evaluations cited.

Similarly, the record here indicates that the evaluations of the Beneficiary's master's degree submitted by the Petitioner conflict with information from AACRAO's EDGE, which the Petitioner's own evidence cited in support of the Beneficiary's qualifications for the offered position.

³ The labor certification states the requirements of the offered position as a U.S. master's degree or foreign equivalent degree. The Petitioner did not allow for any alternate combination of education and experience, such as a bachelor's degree and 5 years of experience. The Beneficiary must meet the minimum requirements of the job offered, as they are stated on the labor certification.

⁴ One of the additional evaluations differs from the revised evaluation by concluding that the Beneficiary has the equivalent of two U.S. bachelor's degrees: one in mathematics; and one in education.

⁵ In a similar fact pattern, a federal court also ruled differently. *See Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314, *4 (E.D. Mich. Aug. 30, 2010) (holding that the record did not establish a beneficiary's possession of the foreign equivalent of a U.S. master's degree where his 2-year Indian master's degree followed a 3-year baccalaureate degree).

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For the foregoing reasons, we find that the record does not establish the Beneficiary's possession of a U.S. master's degree or a foreign equivalent degree in mathematics or a related field as required on the labor certification. As such, the Beneficiary does not meet the terms of the labor certification.

C. The Petitioner's Ability to Pay the Proffered Wage

Although not addressed by the Director, the record also does not establish the Petitioner's ability to pay the proffered wage.

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

In this case, the labor certification states the proffered wage of the offered position of high school math teacher as \$52,480 per year. As previously indicated, the petition's priority date is March 27, 2014.

The record does not contain any evidence regarding the Petitioner's ability to pay the Beneficiary the proffered wage. The evidence of record identifies the Petitioner as a non-profit, government entity. The Petitioner therefore does not likely file federal income tax returns; but, contrary to 8 C.F.R. § 204.5(g)(2), the record lacks copies of the Petitioner's audited financial statements, or annual reports from 2014 or thereafter. Without such regulatory required evidence, we cannot find that the Petitioner has the ability to pay the Beneficiary the proffered wage.

Also, USCIS records indicate the Petitioner's filing of at least four other I-140 petitions after this petition's priority date.⁶ A petitioner must establish its ability to pay the proffered wage of each petition it files from that petition's priority date onward. 8 C.F.R. § 204.5(g)(2). The Petitioner must therefore demonstrate its ability to pay the combined proffered wages of the Beneficiary and the beneficiaries of the other petitions it has filed. The Petitioner must demonstrate its ability to pay the combined proffered wages from March 27, 2014, onward until the beneficiaries of the other petitions obtained lawful permanent residence, or until their petitions were denied, withdrawn, or revoked. *See Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (affirming our denial of a petition where the petitioner did not demonstrate its ability to pay the combined proffered wages of multiple beneficiaries).

The record does not document the priority dates or proffered wages of the other petitions, or whether the Petitioner paid wages to any of the other beneficiaries. The record also does not indicate whether any of the other petitions were withdrawn, revoked, or denied, or whether any of the other beneficiaries

⁶ USCIS records identify the other petitions by the following receipt numbers: [REDACTED]

[REDACTED] and [REDACTED]

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obtained lawful permanent residence. Without this information, we are unable to determine the Petitioner's ability to pay the proffered wage.

For the foregoing reasons, the record does not establish the Petitioner's continuing ability to pay the proffered wage from the petition's priority date onward.

II. CONCLUSION

The record does not establish the Beneficiary's possession of the educational credentials required for the offered position as specified on the labor certification. We will therefore affirm the Director's decision and dismiss the appeal. The Petitioner also did not demonstrate its continuing ability to pay the proffered wage from the petition's priority date onward.

The petition will remain denied for the reasons stated above, with each considered an independent and alternate ground of denial. In visa petition proceedings, a petitioner bears the burden of establishing eligibility for a requested benefit. Section 291 of the Act; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of* [REDACTED] ID# 15955 (AAO Dec. 30, 2016)