



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

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

MATTER OF NMSH-O-H-, LLC

DATE: JUNE 13, 2016

APPEAL OF TEXAS SERVICE CENTER DECISION

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

The Petitioner, a residential healthcare facility, seeks to classify the Beneficiary, a physical therapist, as a member of the professions holding an advanced degree in a Schedule A, Group I occupation. *See* section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). For Schedule A occupations, the U.S. Department of Labor (DOL) has determined that there are not sufficient U.S. workers who are able, willing, qualified, and available and that the wages and working conditions of similarly employed U.S. workers will not be adversely affected by the employment of foreign nationals. 20 C.F.R. § 656.5. Only professional nurses and physical therapists are on the current list of Schedule A, Group I occupations. 20 C.F.R. § 656.5(a).

The Director, Texas Service Center, denied the petition. The Director concluded that “the petitioner has not established eligibility for the benefit sought.”

The matter is now before us on appeal. In its appeal, the Petitioner submits a statement and additional evidence, arguing that the Director erred by finding that the Beneficiary does not hold the foreign equivalent of a U.S. master’s degree. On May 18, 2015, we issued a notice of intent to dismiss the appeal (NOID) in accordance with the regulation at 8 C.F.R. § 103.2(b)(16). The Petitioner submitted a statement and additional evidence in response.

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

I. LAW

Petitions for Schedule A occupations do not require the petitioner to test the labor market and obtain a certified ETA Form 9089, Application for Alien Employment Certification, from DOL prior to filing the petition with U.S. Citizenship and Immigration Services (USCIS). Instead, the petition, including an uncertified ETA Form 9089 in duplicate, is filed directly with USCIS. 8 C.F.R. § 204.5(a)(2) and (k)(4); *see also* 20 C.F.R. § 656.15.

Section 203(b) of the Act states, in pertinent part, that:

(2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability.

(A) In general. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

In addition, for the classification at issue, the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree. 8 C.F.R. § 204.5(k)(4)(i).

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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent 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.

A petitioner must also establish that the beneficiary has satisfied all of the educational, training, experience and any other requirements of the offered position. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg’l Comm’r 1977). In evaluating the job offer portion of the ETA Form 9089 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). Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the

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beneficiary meets the labor certification requirements. See *Snapnames.com, Inc. v. Chertoff*, No. CV-06-65.MO, 2006 WL 3491005 *7 (D. Or. Nov. 30, 2006).

A physical therapist ultimately seeking admission based on an approved immigrant petition must present a certificate from a credentialing organization listed at 8 C.F.R. § 212.15(e). 8 C.F.R. §§ 212.15(a)(1) and (c)(3). The provisions at 8 C.F.R. §§ 212.15(f)(1)(i) and (iii) require that approved credentialing organizations for health care workers verify “[t]hat the alien’s education, training, license, and experience are comparable with that required for an American health care worker of the same type” and “[t]hat the alien’s education, training, license, and experience meet all applicable statutory and regulatory requirements for admission into the United States.” The latter verification, however, is not binding on the Department of Homeland Security (DHS). 8 C.F.R. § 212.15(f)(1)(iii).

II. ANALYSIS

This decision will address two issues. First, in order to meet the requirements of the classification, the Beneficiary must have a baccalaureate degree followed by five years of progressive experience or a degree above a baccalaureate. 8 C.F.R. § 204.5(k)(2) (definition of advanced degree). As the Petitioner has not submitted letters from employers documenting the Beneficiary’s experience as listed on the ETA Form 9089,¹ the Petitioner must establish that the Beneficiary possesses a U.S. academic or professional degree or a foreign equivalent degree above that of a baccalaureate. *Id.* Second, we look at whether the Beneficiary meets the requirements of the position. Based on the Petitioner’s responses on the ETA Form 9089, the Petitioner defined the educational requirement for the position as a master’s degree in physical therapy.² Thus, the Petitioner must establish that the Beneficiary meets the minimum educational requirement of the offered position, a U.S. master’s degree in physical therapy or the foreign equivalent of that degree, by virtue of his degree alone.

The Petitioner filed the Form I-140, Immigrant Petition for Alien Worker, on December 30, 2013. The petition included the ETA Form 9089, a copy of the Beneficiary’s 2006 Bachelor of Science in Physical Therapy from [REDACTED] in the Philippines, a revised “Report of Evaluation of Educational Credentials” (report) and a revised “Coursework Evaluation Checklist” (evaluation). The report indicates that [REDACTED] issued the revisions on February 28, 2012 “based on additional coursework completed by” the Beneficiary at the [REDACTED] in 2011. Finally, the initial submission included a February 28, 2012 letter from [REDACTED] Managing Director of Credentialing Services at [REDACTED]

¹ The regulation at 8 C.F.R. § 204.5(g)(1) provides that evidence of qualifying experience shall consist of letters from current or former employers.

² The Petitioner indicated on ETA Form 9089, Part H on line H.4 that the minimum education level for the position is a master’s degree in physical therapy. The Petitioner further indicated on line H.8 that an alternate combination of experience and education would not be acceptable. On line H.9, the Petitioner indicated that a foreign educational equivalent would be acceptable.

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The [REDACTED] report states that the Beneficiary's degree program consisted of four years of "[c]lassroom time" and ten months of "[c]linical time" and that the school "is comparable to a regionally accredited college or university in the U.S." The report also reflects that the program's admission requirement is a high school diploma. According to the report, the Beneficiary's "education is substantially equivalent to the first professional degree in physical therapy in the United States" and "[t]he first professional degree in the U.S. is the Master's degree or higher."

The Director denied the petition on August 13, 2014. The Director relied on information from the Electronic Database for Global Education (EDGE), which the American Association of Collegiate Registrars and Admission Officers (AACRAO) administers. The Director noted that EDGE equates a Filipino baccalaureate in physical therapy to a U.S. baccalaureate-level degree. The Director informed the Petitioner that the evidence did not "establish that the beneficiary's admission to the institution granting his baccalaureate degree...was comparable to admission to a program authorized to issue graduate level credentials."

On appeal, the Petitioner submits a statement and additional evidence focusing on U.S. physical therapy graduate programs. On May 18, 2015, we issued a NOID, affording the Petitioner another opportunity to submit evidence that the Beneficiary's program issued graduate-level credentials. We also provided the Petitioner a copy of a letter from [REDACTED] of AACRAO, explaining a Filipino baccalaureate in physical therapy is the equivalent of the same degree "once awarded in the USA" based on similarities between the U.S. and Filipino education systems. [REDACTED] concludes that it is the Filipino master's degree in physical therapy which is "comparable to the US master's degree." Finally, we noted that USCIS considers EDGE to be a reliable source of information about foreign credential equivalencies.³ The Petitioner responded on July 30, 2015 with a statement arguing that an advanced degree need not be a Master's degree and discussing five year joint degree programs in the United States and the differences between U.S. and Filipino educational programs in physical therapy.

In the [REDACTED] letter provided with the petition, [REDACTED] explained that, in 2001, the [REDACTED] discontinued the accreditation of baccalaureate degree programs in the United States. She further notes that U.S. accredited programs have converted to post-baccalaureate programs. [REDACTED] concluded that the current first professional degree in the United States was, at the time of her letter, at least a master's degree or higher.

According to [REDACTED] the [REDACTED] analysis does not rely on the title of the degree, but "rather a course by course curriculum review is completed to identify the minimum content requirements as set by the [REDACTED] for US accredited programs." The regulation at 8 C.F.R. § 212.15(f)(i) authorizes [REDACTED] to look at all of the individual's credentials in

³ See *Confluence Intern., Inc. v. Holder*, Civil No. 08-2665 (DSD-JJG), 2009 WL 825793 (D. Minn. Mar. 27, 2009); *Tisco Group, Inc. v. Napolitano*, No. 09-cv-10072, 2010 WL 3464314 (E.D. Mich. Aug. 30, 2010); *Sunshine Rehab Services, Inc.* No. 09-13605, 2010 WL 3325442 (E.D. Mich. Aug. 20, 2010). See also *Viraj, LLC v. Holder*, No. 2:12-CV-00127-RWS, 2013 WL 1943431 (N.D. Ga. May 18, 2013).

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the aggregate when it is considering the individual's suitability for health care worker certification for admissibility purposes. According to the letter, "[redacted] bases its determination on whether an individual's education satisfies a minimum number of credits...not whether an individual's degree is the equivalent of an advanced degree in the United States."

In response to the NOID, the Petitioner first notes that the regulation at 8 C.F.R § 204.5(k)(2) does not define an advanced degree as a Master's degree and, accordingly, does not exclude "lower-level courses of education that are still beyond the baccalaureate level." While the regulation defines an advanced degree as any degree above a baccalaureate, it remains that the credential, regardless of the number of credits, must be a graduate credential based on graduate-level coursework. In addition, the ETA Form 9089 lists the job requirements as a U.S. master's degree in physical therapy or the foreign educational equivalent. Accordingly, the Beneficiary must meet the minimum educational requirement of the offered position.

Second, the Petitioner describes [redacted] role as determining educational sufficiency to practice physical therapy in the United States and points out that DOL's Occupational Outlook Handbook (OOH) confirms that entry level education for a physical therapist in the United States is beyond a baccalaureate. The Petitioner concludes that because the OOH currently indicates that "[p]hysical therapists entering the profession need a Doctor of Physical Therapy (DPT) degree" and the [redacted] determined that the Beneficiary "has attained the educational equivalency necessary for practice as a physical therapist," it is "a per se determination of equivalency between the foreign education evaluated and at least a DPT in the United States."

[redacted] does not evaluate whether the Beneficiary's degree from the Philippines is a single foreign equivalent degree above that of a baccalaureate, the requirement for this classification, or a single foreign equivalent degree to a U.S. master's degree in physical therapy, the degree listed on the ETA Form 9089. *See Snapnames.com, Inc.*, 2006 WL 3491005 at *11 (finding USCIS was justified in concluding that the combination of a three-year degree followed by the coursework required for membership in the [redacted] India, was not a single college or university "degree.") Where the analysis of the Beneficiary's credentials relies on "equivalence to completion of a United States baccalaureate or higher degree," the result is the "equivalent" of an advanced degree rather than a "foreign equivalent degree."⁴ [redacted] looks at an individual's coursework (which may include coursework from multiple sources), and not the individual's degree, to determine "substantial equivalence," which is a different standard. Based upon [redacted] methodology, the evaluation is not a proper basis to determine whether the Beneficiary holds the foreign equivalent of a U.S. master's degree in physical therapy, the requirement listed on the ETA Form 9089 or the foreign equivalent of an advanced degree as required by the classification. In the instant petition, the evaluation uses coursework taken by the Beneficiary after his graduation to make its determination.

⁴ Compare 8 C.F.R. § 214.2(h)(4)(iii)(D) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a United States baccalaureate or higher degree.") The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

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The regulatory authority of approved credentialing organizations to issue certificates for foreign health care workers is for the limited purpose of overcoming the inadmissibility provision pursuant to 8 C.F.R. § 212.15(e). [REDACTED] authority, which USCIS granted pursuant to 8 C.F.R. § 212.15(e)(3), does not extend to determining whether an individual's education satisfies (1) the regulatory definition of "advanced degree" or (2) the minimum requirements stated on the ETA Form 9089, the issues in the instant petition. Regardless, as previously stated, a credentialing organization's verification of the Beneficiary's education, training, license and experience for admission into the United States is not binding on DHS. 8 C.F.R. § 212.15(f)(1)(iii).

Moreover, with respect to the Petitioner's current assertion that the Beneficiary's degree is equivalent to a DPT, the 2012 [REDACTED] evaluation concludes: "The applicant's studies do meet the minimum of 150 semester credits that is required for a master's degree in the United States." The Petitioner has not explained how the 2012 equivalency of the Beneficiary's degree should increase as a result of the OOH's current statement that a DPT is now the minimum entry level degree for physical therapy.

Third, the Petitioner states that the Filipino education system and the U.S. educational systems are "markedly different" because the Filipino "initial degree in Physical Therapy" is titled a bachelor's degree and the U.S. does not offer a bachelor's level degree. The decision in the United States to discontinue the baccalaureate degree in physical therapy does not create a presumption that the Filipino system is not "based on the US educational model." The fact that the United States no longer awards baccalaureate degrees in physical therapy is not, by itself, persuasive evidence that the Beneficiary's bachelor's degree from the Philippines is equivalent to an advanced degree, which is defined by 8 C.F.R. § 204.5(k)(2) as any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. [REDACTED] bases its determination on credits for coursework regardless of whether the coursework was at a baccalaureate or graduate level. EDGE, however, looks at the educational system of the country and the degree itself to make its determination. The Petitioner has not demonstrated that the information from EDGE is not applicable to the Beneficiary's baccalaureate degree, especially since it addresses the five-year (including clinical training) Bachelor of Physical Therapy degree offered in the Philippines. Furthermore, the Petitioner has not established that the Beneficiary's program is different from the other five year physical therapy programs EDGE references.

Fourth, the Petitioner indicates that there are "5-year Master's Degree programs in the United States which clearly qualify as advanced degrees beyond a Bachelor's, and which only require a high school diplomas and minimum test scores for entrance" and that the "beneficiary's education...resembles these advanced degree programs." The Petitioner submitted printouts regarding such programs. According to the information from [REDACTED] "a student must be enrolled as an active undergraduate student at the time of application" and the program "allows [REDACTED] undergraduates to continue at the University for a master's degree after completing their bachelor's degree." According to the information from [REDACTED] "[i]n all of the five-year degree programs, the degrees are awarded separately after each program's degree requirements are satisfied." Similarly, the information from the [REDACTED] indicates that their program "is not a concurrent degree program." Not only do all of the programs require that the student first obtain a

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bachelor's degree, but all of the institutions issue graduate level credentials. In addition, the submitted information regarding five year programs does not address four-year physical therapy programs that include an additional ten months of clinical time.

While USCIS has considered the findings of [REDACTED] USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795.

The truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010). If the petitioner submits relevant and probative evidence that leads the director to believe that the claim is "more likely than not" or "probably" true, the applicant or petitioner has satisfied the standard of proof. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)). In the instant petition, the Petitioner has not submitted relevant and probative evidence that establishes by a preponderance of the evidence that (1) the Beneficiary's degree is a foreign equivalent degree above that of a baccalaureate degree, as required by the classification and (2) the Beneficiary's bachelor's degree in physical therapy from the Philippines is the foreign equivalent of a U.S. master's degree in physical therapy, as required by the ETA Form 9089.

III. CONCLUSION

We will dismiss the appeal for the above stated reasons. 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, the Petitioner has not met that burden.

ORDER: The appeal is dismissed.

Cite as *Matter of NMSH-O-H-, LLC*, ID# 12741 (AAO June 13, 2016)