



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

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

In Re: 23474585

Date: DEC. 07, 2022

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a computer software solutions business, seeks to employ the Beneficiary as a software engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center revoked the approval of the petition, concluding that the record did not establish that the Beneficiary met the educational requirements of the offered position. The matter is now before us on appeal.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

A. Employment-Based Immigrant Petition Process

Employment-based immigration generally follows a three-step process. To permanently fill a position in the United States with a foreign worker, a prospective employer must first obtain certification from the U.S. Department of Labor (DOL). Section 212(a)(5) of the Act, 8 U.S.C. § 1182(a)(5). DOL approval signifies that insufficient U.S. workers are able, willing, qualified, and available for a position. *Id.* Labor certification also indicates that the employment of a noncitizen will not harm wages and working conditions of U.S. workers with similar jobs. *Id.*

If DOL approves a position, an employer must next submit the certified labor application with an immigrant visa petition to U.S. Citizenship and Immigration Services (USCIS). Section 204 of the Act, 8 U.S.C. § 1154. If USCIS approves the petition, a foreign national may finally apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. Section 245 of the Act, 8 U.S.C. § 1255.

However, USCIS may revoke its approval of an immigrant visa petition “at any time” for “good and sufficient cause.” Section 205 of the Act, 8 U.S.C. § 1155. The realization that a petition was approved in error may be good and sufficient cause for revoking its approval. *Matter of Ho*, 19 I&N Dec. 582, 590 (BIA 1988). USCIS may issue a notice of intent to revoke (NOIR) a petition’s approval if the unexplained and un rebutted record at the time of the notice’s issuance would have warranted the filing’s denial. *Matter of Estime*, 19 I&N Dec. 450, 451 (BIA) 1987). The NOIR provides the opportunity to submit evidence in support of the petition and in opposition to the alleged grounds for revocation. 8 C.F.R. § 205.2(b). If the NOIR response does not rebut or resolve revocation grounds stated in the notice, USCIS properly revokes a petition’s approval. *Matter of Estime*, 19 I&N Dec. at 451-52.

B. Advanced Degree Professional Classification

The term “advanced degree” is defined in the regulation at 8 C.F.R. § 204.5(k)(2) as follows:

Advanced degree means any 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 regulations at 8 C.F.R. § 204.5(k)(3)(i) state that a petition for an advanced degree professional must be accompanied by either:

- (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, a beneficiary must meet all of the education, training, experience, and other requirements specified on the labor certification as of the petition’s priority date.¹ *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg’l Comm’r 1977).

II. ANALYSIS

A. Procedural History

In July 2013, the Petitioner filed Form I-140, Immigrant Petition for Alien Workers, seeking to classify the Beneficiary as an advanced degree professional under section 203(b)(2) of the Act. In October 2013, USCIS approved the petition.

¹ The priority date of the petition is the date the underlying labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). In the instant case, the priority date is November 5, 2012.

In March 2021, the Petitioner filed another Form I-140 on the Beneficiary's behalf, seeking to classify him as a professional under section 203(b)(3)(A)(ii) of the Act and using the same labor certification as the first Form I-140. In September 2021, USCIS denied this second petition, finding that the Beneficiary did not meet the position's minimum educational requirements as certified on the labor certification.

In November 2021, USCIS sent the Petitioner an NOIR regarding the approval of the instant I-140 petition seeking classification of the Beneficiary as an advanced degree professional. After receiving the Petitioner's response to the NOIR, USCIS revoked the approval of the I-140 petition, finding that while the Beneficiary met the labor certification's requirement of two years of work experience, he did not meet its stated minimum education requirement of a U.S. master's degree or a foreign educational equivalent. This matter is now before us on appeal.

B. Beneficiary Qualifications for the Offered Position

The primary issue on appeal is whether the Beneficiary met all of the requirements of the offered position as of the petition's priority date. The record indicates that the Beneficiary has the following post-secondary educational credentials from schools in India:

- Bachelor of Commerce requiring three years of study (1991);²
- Master of Commerce requiring two years of study after a three-year baccalaureate degree (2000); and
- Master of Science in Information Technology requiring two years of study after a three-year baccalaureate degree (2006).

In evaluating a beneficiary's qualifications, USCIS must examine the job offer portion of the labor certification to determine a position's minimum requirements. USCIS may neither ignore a certification term, nor impose additional requirements. *See, e.g., Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983).

The labor certification in this case states that the minimum level of education required for the offered position is a master's degree in computer science, information technology (IT), business administration, mathematics, or a related field. The labor certification further states that the Petitioner will accept a foreign educational equivalent, but that it will not accept any alternate combination of education and experience. Finally, the labor certification states that the offered position requires two years of related work experience.

The I-140 petition stated that the Beneficiary meets the position's educational requirements because he has the foreign educational equivalent of a master's degree in IT. To support this claim, the Petitioner submitted copies of the Beneficiary's diplomas, academic transcripts, and an evaluation of his foreign educational credentials. The evaluation submitted with the initial evidence, from

² The Beneficiary's three-year bachelor's degree reflects one less year of study than most U.S. baccalaureates require. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Reg'l Comm'r 1977) (declining to consider a three-year bachelor of science degree from India as the equivalent of a United States baccalaureate degree because the Indian degree did not require four years of study).

[redacted] concluded that the Beneficiary “has an educational equivalent of Master of Science in Information Systems from a regionally accredited college or university in the United States.”

USCIS may, in its discretion, treat an educational evaluation from a qualified expert as an advisory opinion. However, if the evaluation conflicts with other evidence or is in any way questionable, USCIS may reject it or afford it less evidentiary weight. *Matter of Caron Int’l Inc.*, 19 I&N Dec. 791, 795 (Comm’r 1988).

In his NOIR, the Director referred to the Electronic Database for Global Education (EDGE), an online resource that federal courts have found to be a reliable source of foreign educational equivalencies.³ EDGE states that in the Indian educational system, a master of science (MSc) degree is a two-year degree requiring a three-year baccalaureate degree for entry and “represents attainment of a level of education comparable to a bachelor’s degree in the United States.”⁴ The Director therefore requested additional documentation demonstrating that the Beneficiary meets the minimum education requirements of the labor certification.

In response to the NOIR, the Petitioner provided more evaluations of the Beneficiary’s credentials, information about the Beneficiary’s past work experience, and documentation of the admissions requirements of U.S. university IT master’s degree programs and Indian Ph.D. programs. The Petitioner argued that since the Beneficiary earned his master’s in IT after earning the equivalent of a U.S. baccalaureate degree in commerce or business administration, the former qualifies as a degree above a baccalaureate and is therefore an “advanced degree” as defined at 8 C.F.R. § 204.5(k)(2).

The Director found that the second master’s degree did not constitute progressive educational experience beyond the first master’s degree, since both master’s degree programs only required a three-year Indian baccalaureate degree for entry and both were considered by EDGE to be equivalent to a U.S. baccalaureate degree. Since the record did not establish that the Beneficiary had master’s degree or a foreign educational equivalent, as required by the labor certification, the Director revoked the approval of the petition.

On appeal, the Petitioner states that the Director’s decision was incorrect as a matter of law and fact, that it ignored the documentation provided, and that the Petitioner is entitled to equitable relief.⁵ The Petitioner also raises the new argument that each of the Beneficiary’s Indian master’s degrees is equivalent to a U.S. master’s degree and submits a new educational evaluation to support this claim. The evaluation from [redacted] of [redacted] University concludes that the Beneficiary has the equivalent of a master of science in business administration and a master of science in IT.

³ EDGE was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO is a non-profit, voluntary association of more than 11,000 professionals in more than 40 countries. See AACRAO, “Who We Are,” <https://www.aacrao.org/who-we-are>; see also *Viraj, LLC v. U.S. Att’y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as “a respected source of information”).

⁴ The Beneficiary’s two-year master’s degree in commerce represents the same level of educational attainment. Master of: Arts, Business Administration, Computer Management, Commerce, or Science – AACRAO EDGE, <https://www.aacrao.org/edge/country/credentials/credential/india/master-of-arts-business-administration-computer-management-commerce-or-science>.

⁵ Our jurisdiction is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(E)(iii) and does not provide for authority to apply any forms of equitable relief. See *Matter of Hernandez-Puente*, 20 I&N Dec. 335, 338-39 (BIA 1991). As such, we will not address this argument further.

This evaluation references a 2008 article from World Education Services (WES), an organization that conducts educational equivalency evaluations, announcing a policy change regarding three-year baccalaureate degrees from India. The article states that due to changes in the Indian education system, if such a degree is earned at a school which has an “A” from India’s National Assessment and Accreditation Council (NAAC) and is earned in the first or second class, it may be considered equivalent to a U.S. baccalaureate degree. However, even if we were to accept this policy, which we do not, it is inapplicable to the present case because the Beneficiary’s baccalaureate degree was earned in 1991, well before the educational reforms referenced by the article, and he received the degree in the third class. Furthermore, while [redacted] states that the Beneficiary’s baccalaureate university currently has an “A++” from NAAC, NAAC was not founded until 1994 and therefore could not have given the school a grade while the Beneficiary was attending.

[redacted] then proceeds to evaluate the Beneficiary’s master’s degrees as requiring “the completion of education equivalent to the USA Bachelor’s degree” for admission, which is unsupported by the evidence for the reasons stated above. Admission to a U.S. master’s degree program typically follows four years of undergraduate studies. *See Matter of Shah*, 17 I&N Dec. at 245. Based on the information in EDGE, the record indicates that admission to each of the Beneficiary’s graduate programs required only a three-year bachelor’s degree, which is considered equivalent to three years of university study in the United States.⁶ We therefore decline to adopt this evaluation’s conclusions. *Matter of Caron Int’l Inc.*, 19 I&N Dec. at 795.

On appeal, the Petitioner contends that the Director’s reliance on EDGE was erroneous and ignored the evaluations submitted in response to the NOIR. One of these evaluations is from [redacted] who contributed to the EDGE profile of the Indian education system and states that a two-year master’s degree like the Beneficiary’s degree in IT is equivalent to a U.S. master’s degree if the student passes in the first class and if the awarding school is graded “A” by NAAC.⁷ He states that this method of evaluation “would be consistent with all other comparable British educational system countries,” such as the United Kingdom, Canada, Australia, and New Zealand, but that “the AACRAO EDGE reviewers did not accept this for inclusion,” and that “[t]hese inconsistencies in EDGE can be arbitrary.”

The evaluation from [redacted] of [redacted] University references [redacted] and states that EDGE’s evaluation of Indian degrees “is inconsistent with other British Commonwealth countries.” However, unlike [redacted] evaluation, it does not differentiate between degrees based on grades earned by the student or the school. Instead, it cites *The New Country Index*, a book about foreign educational credentials, as stating that Indian master’s degrees earned after a three-year baccalaureate are equal to a U.S. baccalaureate degree for education sequences that are four years in length or a U.S. baccalaureate and a master’s degree for sequences that are five years in length.

⁶ 3-year Bachelor of Arts (B.A.); Bachelor of Commerce (B.Com.); Bachelor of Science (B.Sc.); Bachelor of Computer Applications (B.C.A.) – AACRAO EDGE, [https://www.aacrao.org/edge/country/credentials/credential/india/3-year-bachelor-of-arts-\(b.a.\)-bachelor-of-commerce-\(b.com.\)-bachelor-of-science-\(b.sc.\)-bachelor-of-computer-applications-\(b.c.a.\)](https://www.aacrao.org/edge/country/credentials/credential/india/3-year-bachelor-of-arts-(b.a.)-bachelor-of-commerce-(b.com.)-bachelor-of-science-(b.sc.)-bachelor-of-computer-applications-(b.c.a.)).

⁷ The Beneficiary received his two-year Master of Science in IT in the first class from a school with an “A” from NAAC. However, it is noted that the article from WES regarding the use of student and school grades for credentials evaluations only addressed Indian three-year baccalaureate degrees.

First, we note that there is insufficient documentation in the record to support the claim that EDGE's evaluation of Indian degrees is an "arbitrary" departure from how degrees in other countries are evaluated. The fact that degree programs in different countries take the same amount of time does not, in and of itself, demonstrate that such programs represent the same level of educational attainment, a point that [redacted] concedes when he indicates that only a subset of Indian two-year master's degrees following a three-year baccalaureate should be considered equivalent to a U.S. baccalaureate. A review of EDGE further indicates that the "comparable British education system[s]" cited by [redacted] actually vary by country and (in the case of Canada) by province. [redacted] also provides no explanation for why, despite arguing at length that all such degrees are equivalent to a U.S. master's degree, he concludes that the Beneficiary's two-year master's in commerce is instead equivalent to a U.S. baccalaureate.⁸ This is insufficient to demonstrate that the Director's reliance on EDGE, rather than the evaluations submitted by the Petitioner, was in error. *Id.*

The evaluations also argue that the Beneficiary has earned the equivalent of a U.S. master's degree based on his total number of post-secondary credits or years of study. However, this conclusion is based on incorrectly combining the credits the Beneficiary received in both master's programs. The record indicates that both of the Beneficiary's master's degrees required a three-year baccalaureate degree for admission and took two years to complete, and that each represents a level of educational attainment equivalent to a U.S. baccalaureate degree. Since the Beneficiary could have earned the master's degree in IT without any of the credits earned while studying for the master's in commerce, the arguments regarding the Beneficiary's total number of credits are not persuasive.⁹

Similarly, while [redacted] names various sequences of credentials which are considered equivalent to a U.S. baccalaureate degree, these sequences are considered progressive because each credential in each sequence requires the completion of the previous one for entry. There is no indication that the Beneficiary's IT degree progressed from his master's degree in commerce, or that completion of the latter was required for admission into the former.

The evaluations further state that the Beneficiary's master's degrees are equivalent to U.S. master's degrees because the former allow entry into Indian doctoral programs, and EDGE states that Indian doctoral degrees are considered equivalent to U.S. ones. EDGE does indicate that Indian Doctor of Philosophy degrees (Ph.D.) are equivalent to U.S. ones, and that a master's degree like the Beneficiary's is sufficient for entry into an Indian Ph.D. program.¹⁰ It also indicates that one may enter an Indian Ph.D. program with a Master of Philosophy (M.Phil) degree, which represents one to two years of study beyond the master's degree and is equivalent to a U.S. master's degree.¹¹ Finally,

⁸ Similar concerns apply to the initial credentials evaluation from [redacted] which calls both master's degrees "graduate-level" but states that the degree in commerce is equivalent to a U.S. baccalaureate degree while the one in IT is equivalent to a U.S. master's degree. Where there are inconsistencies in the record, the Petitioner must resolve these inconsistencies with objective, independent evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not done so in this case.

⁹ For example, subtracting the master of commerce credits from the Beneficiary's total number of credits results in a number that is less than the typical U.S. master's degree credit requirement.

¹⁰ Doctor of Philosophy (Ph.D.) – AACRAO EDGE, [https://www.aacrao.org/edge/credentials/credential/india/doctor-of-philosophy-\(ph.d.\)](https://www.aacrao.org/edge/credentials/credential/india/doctor-of-philosophy-(ph.d.)).

¹¹ Master of Philosophy (M.Phil.) – AACRAO EDGE, [https://www.aacrao.org/edge/credentials/credential/india/master-of-philosophy-\(m.phil.\)](https://www.aacrao.org/edge/credentials/credential/india/master-of-philosophy-(m.phil.)).

EDGE indicates that an Indian Ph.D. program may last one to five years.¹² It is therefore not readily apparent that a student entering an Indian Ph.D. program with one of the Beneficiary's Indian master's degrees would have the same program length or graduation requirements as one entering with an M.Phil degree. The fact that an Indian Ph.D. represents a level of educational attainment which is equivalent to a U.S. Ph.D. does not establish that all degrees which are sufficient for entry into such programs are equivalent to each other or to a U.S. master's degree.

Similar concerns apply to the contention that the Beneficiary's master's degrees must be equivalent to U.S. master's degrees because his three-year baccalaureate would be sufficient for him to gain admission to U.S. master's degree programs in IT. First, we note that the documentation provided does not actually establish that an Indian three-year baccalaureate suffices as an entry requirement into these programs. The documents from the University [redacted] indicate that it requires a "four-year bachelor's degree or its equivalent in other countries," and then provide that "[i]nternational applicants...with a 3-year undergraduate degree may be admitted on the recommendation of the Admission Committee which will be based on students' preparation." This indicates that this school does not consider a three-year baccalaureate degree to be equivalent to a four-year one and requires proof of additional preparation in order for students with only a three-year degree to be admitted. The materials provided from other schools also do not state that a three-year Indian undergraduate degree is sufficient for admission. Second, [redacted] argument that the Beneficiary could have gained admission to a U.S. graduate program in IT based on a combination of his three-year baccalaureate and his work experience is unpersuasive, as it does not pertain to the educational equivalency of his actual master's degree in IT, which only required the three-year baccalaureate degree for admission.

Finally, the Petitioner references minutes from an American Immigration Lawyers Association liaison meeting with the Nebraska Service Center on April 12, 2007. According to this document, a USCIS official stated that an Indian three-year baccalaureate degree, a one-year postgraduate diploma, and a two-year master's degree in the same or similar fields may be considered equivalent to a U.S. master's degree if the one-year diploma is determined to be "progressive postgraduate education that is a continuation" of the three-year baccalaureate degree. The Petitioner states that since the Beneficiary's two-year master's degree in commerce was a progressive post-graduate continuation of his three-year baccalaureate in commerce, the Beneficiary's credentials are equivalent to a U.S. master's degree.

First, we note that unpublished agency decisions and legal opinions are not binding, even when they are published in private publications or widely circulated. *See R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp.2d 1014, 1022 (D. Haw. 2000), *aff'd*, 273 F.3d 874 (9th Cir. 2001). Second, the quotation that the Petitioner cites states that the referenced educational credentials would all need to be in the same field in order to possibly be considered equivalent to a U.S. master's degree. The Beneficiary's second master's degree is in IT, which is not the same field as commerce. Because of the difference in fields of study and because the two master's degrees had the same admissions requirements, the record does not indicate that the Beneficiary's second master's degree constituted a progression from his first one, and so this statement does not pertain to his case.

¹² Doctor of Philosophy (Ph.D.) – AACRAO EDGE, *supra*.

The Petitioner has not established that the Beneficiary had a U.S. master's degree or a foreign educational equivalent as of the petition's priority date. Therefore, he did not meet the minimum educational requirements stated on the labor certification and the petition's approval remains revoked.

B. Beneficiary Eligibility for the Requested Classification

Beyond the decision of the Director, we note that the evidence does not establish that Beneficiary meets the requirements of the advanced degree professional classification. Section 203(b)(2)(A) of the Act states that an advanced degree professional must hold an "advanced degree." The regulation at 8 C.F.R. § 204.5(k)(2) defines an "advanced degree" as "any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." Alternatively, the regulation states that "[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." *Id.*

As explained above, the Beneficiary does not hold an academic or professional degree or a foreign equivalent degree above that of baccalaureate, and so he cannot qualify as an advanced degree professional on that basis. Furthermore, the record does not indicate that he qualifies for the classification based on a United States baccalaureate degree or a foreign equivalent degree followed by five years of progressive work experience. The labor certification states that the Beneficiary has the following relevant work experience:

- Petitioner: Software Engineer, July 11, 2011 to time of filing;
- [REDACTED]: Module Lead, May 14, 2007, to May 31, 2011;
- [REDACTED] CRM Consultant, July 26, 2006, to April 10, 2007;
- [REDACTED]: CRM Consultant, April 4, 2005, to July 24, 2006; and
- [REDACTED]: Software Engineer, July 24, 2002, to November 20, 2004.

The regulation at 8 C.F.R. § 204.5(g)(1) states that evidence relating to a beneficiary's qualifying experience shall be in the form of letters from employers, and that these letters shall include the name, address, and title of the writer, as well as a specific description of the duties the beneficiary performed. If such evidence is unavailable, other documentation relating to the beneficiary's experience will be considered. Additionally, the Petitioner certified in the labor certification that none of the Beneficiary's qualifying work experience was gained while working for the Petitioner.¹³ Therefore, that experience will not be considered when determining the Beneficiary's eligibility.

In order to demonstrate the Beneficiary's work experience, the Petitioner submitted various letters from the Beneficiary's employers, all of which include the writer's name, address, and title. The letters from [REDACTED] indicate that from May 7, 2007, to March 31, 2009, the Beneficiary was employed as an Analyst. The Beneficiary was promoted to the role of Module Lead on April 1, 2009. It is noted that the labor certification states that the Beneficiary's only title at [REDACTED] was Module Lead. Furthermore, none of the letters provided from [REDACTED]

¹³ Experience gained while working for the petitioning employer cannot be used to satisfy the minimum job requirements on the labor certification unless that experience was gained in a position not "substantially comparable" to the proffered position. 8 C.F.R. § 656.17(i)(3).

state the Beneficiary's duties in detail, as required by regulation. Therefore, the Beneficiary's time with this organization will not be counted towards the Beneficiary's experience.

The letter from [redacted] is dated February 17, 2007, and verifies that the Beneficiary was employed with that company at the time. However, the letter does not state the Beneficiary's job title, duties, or start date. Therefore, the evidence does not sufficiently establish the Beneficiary's experience with [redacted]. Similarly, the letter from [redacted] [redacted] verifies the Beneficiary's dates of employment but does not state his title or duties. This also does not sufficiently establish the Beneficiary's experience.

Finally, the letter from [redacted] states that the Beneficiary worked for that company from an unspecified date in July 2002 to November 30, 2004, and states his title and duties. This letter therefore verifies that the Beneficiary had approximately two years and four months of relevant work experience as of the petition priority date.

The documentation provided does not establish the Beneficiary's work experience with [redacted] [redacted] or [redacted]. Because the Beneficiary worked with [redacted] for less than five years, this does not sufficiently establish that as of the priority date, the Beneficiary had at least five years of progressive post-baccalaureate work experience in the specialty, which is required to show that he has the equivalent of an advanced degree under 8 C.F.R. § 204.5(k)(2).

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. Therefore, the Beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

In any future filing in this matter, the Petitioner should address this issue and submit appropriate documentation under 8 C.F.R. § 204.5(g)(1) to demonstrate the Beneficiary's qualifying work experience.

C. Ability to Pay

Beyond the decision of the Director, we also find that the Petitioner has not established its ability to pay the proffered wage. The regulation at 8 C.F.R. § 204.5(g)(2) states that a petitioner must establish that it has the ability to pay the beneficiary the proffered wage from the priority date onward. Documentation of the ability to pay shall be in the form of copies of annual reports, federal tax returns, or audited financial statements, and in appropriate cases, additional financial evidence may be submitted. *Id.* This documentation should demonstrate the Petitioner's continuing ability to pay the proffered wage of \$78,811 a year starting on the priority date, which in this instance is November 5, 2012.

In determining ability to pay, USCIS first determines whether the petitioner paid the beneficiary the full proffered wage each year from the priority date. If the petitioner did not pay the proffered wage in any given year, USCIS next determines whether the petitioner had sufficient net income or net current assets to pay the proffered wage (reduced by any wages paid to the beneficiary).

If net income and net current assets are insufficient, USCIS may consider other relevant factors, such as the number of years the petitioner has been in business, the size of its operations, the growth of its business over time, its number of employees, the occurrence of any uncharacteristic business expenditures or losses, its reputation within its industry, or whether a beneficiary will replace a current employee or outsourced service. *See Matter of Sonogawa*, 12 I&N Dec. 612, 614-15 (Reg'l Comm'r 1967).

In the NOIR, the Director requested evidence of the Petitioner's ability to pay the proffered wage from 2013 onwards, finding that the Petitioner had established its ability to pay in 2012.¹⁴ We will withdraw this finding. The Beneficiary's 2012 Internal Revenue Service Form W-2, Wage and Tax Statement, indicates that he was paid \$64,991 by the Petitioner that year, which is \$13,820 less than the annual proffered wage (wage deficiency). To demonstrate its ability to pay the wage deficiency in 2012, the Petitioner submitted its 2011 and 2013 federal tax returns and a 2012 balance sheet accompanied by an accountant cover letter stating that this document was not reviewed or audited, and that management "elected to omit substantially all of the disclosures and the statement of cash flows required by accounting principles generally accepted in the United States of America." The record also contains monthly bank statements from 2011 to 2013 but does not include the statements issued from February to May of 2012.

As stated above, the regulation at 8 C.F.R. § 204.5(g)(2) requires the petitioner to establish its ability to pay by submitting annual reports, federal tax returns, or audited financial statements. The Petitioner did not submit any of these forms of evidence for 2012. While the regulation allows additional evidence such as bank statements to be submitted to show eligibility "in appropriate cases," and while we may examine such evidence in light of the totality of the circumstances, the Petitioner in this instance has not explained why it did not submit one of the regulatory-prescribed forms of evidence. Furthermore, the bank statements only show the amount in the Petitioner's bank account for a given period and do not reflect any current outstanding liabilities. Without one of the regulatorily prescribed forms of evidence, we cannot determine whether the bank account balances represent net current assets that could be used to pay the wage deficiency.

The regulation at 8 C.F.R. § 204.5(g)(2) states that where a petitioner relies on financial statements to demonstrate its ability to pay the proffered wage, those financial statements must be audited. An audit is conducted in accordance with generally accepted accounting standards to obtain a reasonable assurance that the financial statements of the business are free of material misstatements. The accountant's report accompanying the 2012 financial statement indicates that it was produced pursuant to a compilation rather than an audit and therefore consists of the representations of management compiled into standard form. The unsupported representations of management are not considered reliable evidence of the Petitioner's ability to pay the proffered wage. Finally, the 2011 and 2013 federal tax returns do not pertain to 2012. The Petitioner therefore has not established its ability to pay the wage deficiency in 2012.

Furthermore, where a petitioner has filed Form I-140 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

¹⁴ The Director did not include this ground in their revocation.

wage to each beneficiary. *See* 8 C.F.R. § 204.5(g)(2); *see also Patel v. Johnson*, 2 F. Supp. 3d 108, 124 (D. Mass. 2014) (upholding our denial of a petition where a petitioner did not demonstrate its ability to pay multiple beneficiaries). USCIS records show that the Petitioner filed multiple Form I-140 petitions for other beneficiaries. Thus, the Petitioner must establish its ability to pay this Beneficiary as well as the beneficiaries of the other Form I-140 petitions that were pending or approved as of, or filed after, the priority date of the current petition.¹⁵ Because this issue has not been addressed, and because the Petitioner has not submitted one of the required forms of evidence under 8 C.F.R. § 204.5(g)(2), it have not established its ability to pay the Beneficiary as of the 2012 priority date.

In any future filing in this matter, the Petitioner must submit copies of annual reports, federal tax returns, or audited financial statements for 2012. It must also establish its ability to pay the proffered wages of its other relevant I-140 beneficiaries. The Petitioner may also submit additional evidence of its ability to pay the proffered wage, including materials supporting the factors stated in *Matter of Sonogawa*, 12 I&N Dec. at 614-15.

III. CONCLUSION

The Petitioner has not established that as of the petition's priority date, the Beneficiary met the minimum education requirements of the proffered position. We will therefore affirm the revocation of the petition's approval.

ORDER: The appeal is dismissed.

¹⁵ The Petitioner's ability to pay the proffered wage of one of the other I-140 beneficiaries is not considered:

- After the other beneficiary obtains lawful permanent residence;
- If an I-140 petition filed on behalf of the other beneficiary has been withdrawn, revoked, or denied without a pending appeal or motion;
- Before the priority date of the I-140 petition filed on behalf of the other beneficiary; or
- In any year when the Petitioner has paid the Beneficiary a salary equal to or greater than the proffered wage.