



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

Non-Precedent Decision of the
Administrative Appeals Office

In Re: 22894821

Date: NOV. 09, 2022

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Advanced Degree Professional

The Petitioner, a mental health services business, seeks to employ the Beneficiary as a bilingual therapist. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” 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 denied the petition on the ground that the Petitioner did not establish that the Beneficiary has the requisite educational credential to meet the terms of the labor certification and to qualify for classification as an advanced degree professional.

On appeal the Petitioner submits a brief and supporting materials and asserts that the evidence of record establishes that the Beneficiary has the requisite education to qualify for the proffered position and the requested classification.

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 Skirball Cultural Ctr., 25 I&N Dec. 799, 806 (AAO 2012); Matter of Chawathe, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon de novo review, we will dismiss the appeal.

I. LAW

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved 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). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. See section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). See section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition,

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.

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). In evaluating the job offer portion of the ETA Form 9089, Application for Permanent Employment 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 InfraRed Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Even though the labor certification may be prepared with a beneficiary in mind, USCIS has an independent role in determining whether the 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). 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. *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 834 (D.D.C. 1984) (emphasis added).

II. ANALYSIS

At issue on appeal is whether the Beneficiary meets the education and experience requirements of the labor certification. Section H of the accompanying labor certification states that the minimum requirements for the job offered are as follows:

H.4	Education: minimum level	Master’s
H.4-B	Major field of study	Counseling

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 this case the priority date is June 22, 2020.

H.5	Training required?	No
H.6	Experience in the job offered required?	Yes
H.6-A	Number of months of experience	24
H.7	Alternate field of study acceptable?	Yes
H.7-A	Major field of study	Social work or related field, or its equivalent
H.8	Alternate combination of education and experience acceptable?	No
H.9	Foreign educational equivalent acceptable?	Yes
H.10-A	Is experience in an alternate occupation acceptable?	Yes
H.10-B	Job title of alternate occupation	Occupation closely related to bilingual therapist

Section H.14, specific skills or other requirements, states, in pertinent part, “for H.6, H.6-A, H.10, and H.10-A, above, completed degree(s) from an accredited institution that are above the minimum education requirement may be substituted for experience on a year for year basis.” Section H.14 lists further requirements, including a State of Utah issued certification or license, other certifications for specified treatments, supervised experience, experience with specific diagnoses and treatments, and other specific demonstrated abilities.

Therefore, to meet the education requirements of the instant labor certification, the Beneficiary must possess a U.S. master's degree, or its foreign equivalent, in counseling, social work or related field. In order to meet the experience requirements, the Beneficiary must have 24 months of job experience as a bilingual therapist or a closely related occupation, or degree(s) higher than a master’s degree as a substitute for the job experience on a year for year basis.

For the education requirements, the Petitioner provided a copy of the Beneficiary's foreign language diploma and academic transcript with English translations from Universidad [redacted] located in [redacted] Chile, which indicates that in 2002 she obtained a Título Profesional de Psicólogo (the title of psychologist) after completing the coursework over a five year period from 1997 to 2001. With the academic transcript, the Petitioner submitted the “Curriculum Mesh of Bachelor of Psychology” for University [redacted] School of Psychology, which sets out the five year coursework curriculum for the bachelor of psychology degree. The Petitioner also submitted a credential evaluation and authentication report from World Education Services summarizing the Beneficiary’s transcripts from Universidad [redacted] and Universidad [redacted] with an assertion that the Beneficiary’s degree from Universidad [redacted] is equivalent to a U.S. bachelor’s and master’s degree from a regionally accredited institution.

The Petitioner also provided work experience letters, her State of Utah license as a clinical mental health counselor, training certificates, and certifications showing that the Beneficiary possesses the requisite job experience and specified skills required by the labor certification.

The Director issued a notice of intent to deny (NOID) informing the Petitioner of contrary information in the Electronic Database for Global Education (EDGE), an online resource that federal courts have

found to be a reliable, peer-reviewed source of educational equivalencies.² The Director advised the Petitioner that EDGE indicates a Título Profesional in Chile is a credential awarded by a professional institute or university upon completion of up to ten semesters of study, and the degree is comparable to a bachelor's degree in the United States.

The Director did not accept the Petitioner's assertions that the Beneficiary's degree is equivalent to a U.S. master's degree based on the Beneficiary being issued a license as a clinical mental health counselor from the State of Utah, Department of Commerce, Division of Occupational and Professional Licensing (DOPL). The Director found that the additional evidence of the Beneficiary's educational credentials and experience were insufficient and did not address the information in EDGE. He noted that the entry in EDGE for the Chile educational system provides that a degree entitled Título Profesional is "[a]warded by a professional institute or a university upon completion of up to ten semesters of study" and "represents attainment of an education comparable to bachelor's degree in the [U.S.]", while a degree entitled Magister is "[a]warded by a university upon completion of two or more years of graduate study, including a thesis" and "represents attainment of a level of education comparable to a master's degree in the [U.S.]" As such, the Director denied the petition finding that the Petitioner did not demonstrate the Beneficiary's possession of an advanced degree, specifically the U.S. master's degree, or foreign equivalent, in counseling, social work, or related field required by the labor certification.

On appeal the Petitioner asserts that the Director did not give proper evidentiary weight to the credential evaluation and authentication report from World Education Services. The Petitioner relies on a letter dated March 13, 2014 from the Director of USCIS to a member of Congress indicating that "opinions expressed in evaluations and resource materials, as well as EDGE, are not binding on USCIS." The Petitioner also relies on an INS memorandum from 1995 sent from the Office of Examinations to service center directors, which states, "Credential evaluations submitted with an H-1B petition by a reputable credentials evaluation service should be accepted without question unless containing obvious errors. The ability of the credential evaluator to perform the evaluation should not be challenged if the evaluation was performed by a professional credentials evaluation service." Therefore, the Petitioner argues that the findings in EDGE should not outweigh any other credible academic evaluation. We disagree with the Petitioner's assertions.

The World Education Services report submitted by the Petitioner lists the Beneficiary's coursework at Universidad [redacted] from 1993 to 1996 and Universidad [redacted] from 1997 to 2001, with the U.S. grade equivalency for each course.³ The report includes a statement of U.S. equivalency

² EDGE was created by the American Association of Collegiate Registrars and Admission Officers (AACRAO), "a nonprofit, voluntary, professional association of more than 11,000 higher education professionals who represent approximately 2,600 institutions in more than 40 countries." AACRAO, Who We Are," <https://www.aacrao.org/who-we-are> (Mar. 2, 2022); see, e.g., *Viraj, LLC v. U.S. Att'y Gen.*, 578 Fed. Appx. 907, 910 (11th Cir. 2014) (describing EDGE as "a respected source of information"). We consider EDGE to be a reliable source of information about foreign credential equivalencies. 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-1 0072, 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).

³ For the Beneficiary's coursework at Universidad [redacted] the credential evaluation and authentication report from World Education Services includes a remarks section indicating the Beneficiary "was exempted from part of the program on the basis of study previously completed" at Universidad [redacted] However, the Petitioner submitted a copy of

summary for the Universidad [redacted] “[b]achelor’s and master’s degree from a regionally accredited institution.” The report also states that “[d]ue to the unified nature of the program, it is not possible to differentiate between undergraduate and graduate study.” The report does not include detailed analysis of the Beneficiary’s coursework and does not provide a substantive basis for its assertions that it is unable to differentiate between the undergraduate and postgraduate credit hours.

Evaluations of educational credentials by evaluation services and individual evaluators are utilized by USCIS as advisory opinions only. We may reject or give less evidentiary weight to expert opinions that conflict with evidence in the record or are “in any way questionable.” Matter of Caron Int’l, Inc., 19 I&N Dec. 791, 795 (Comm’r 1988); see also Matter of Sea, Inc., 19 I&N Dec. 817 (Comm’r 1988). “Officers may favorably consider a credentials evaluation performed by an independent credentials evaluator who has provided a credible, logical, and well-documented case for such an equivalency determination that is based solely on the noncitizen’s foreign degree(s). . . . Opinions rendered that are merely conclusory and do not provide a credible roadmap that clearly lays out the basis for the opinions are not persuasive.” 6 USCIS Policy Manual E.9 <https://www.uscis.gov/policymanual> (emphasis added). While we have considered the report submitted by the Petitioner, we find it fails to overcome concerns raised by other evidence in the record, such as its inconsistency with EDGE and the official University of [redacted] curriculum submitted by the Petitioner.

The Petitioner further asserts that, because the Beneficiary already possesses a clinical mental health counselor license in the State of Utah, and because the state licensing board requires that applicants for licensure possess the equivalent of a U.S. master’s degree or doctorate degree, the Beneficiary’s licensure should be accepted as further evidence that she possesses the foreign equivalent master’s degree required by the labor certification. The record includes two letters from DOPL. The letter dated November 2, 2021 states the Beneficiary holds her license based on Utah Code Annotated §58-60-405 qualifications, and it lists the statutory qualifications, which include, “produce certificated transcripts evidencing completion of: . . . a master’s or doctorate degree conferred to the applicant . . . from a program accredited by the Council for Accreditation of Counseling and Related Educational Programs; or . . . clinical mental health counseling or an equivalent field from a program affiliated with an institution that has accreditation that is recognized by the Council for Higher Education Accreditation” A letter dated November 10, 2021 states that the Beneficiary “holds an active Clinical Mental Health Counselor license” and “[u]nder Utah Code Annotated §58-60-405(1)(c)(i)(B), multiple types of mental health training programs – including programs meeting the statutory requirements in psychology, social work, and counseling, may qualify for the educational requirements of clinical mental health counseling license.” The Petitioner also submitted an unsigned letter from [redacted] PhD CRC, explaining the Beneficiary qualifies to work as a clinical mental health counselor by meeting the education requirements, passage of a national exam, and supervised work experience.

The Director found that while the evidence submitted attests to the Beneficiary having the necessary education and experience to be licensed by DOPL as a clinical mental health counselor, it is insufficient to demonstrate that the Beneficiary’s education meets the requirements of the labor certification. Upon de novo review, we agree with the Director’s findings.

the Beneficiary’s diploma and official academic transcripts from Universidad [redacted] which do not indicate exemption from part of the program based on the Beneficiary’s previous coursework at Universidad [redacted]

The Petitioner refers to our non-precedent decision concerning the statutory requirements for an advanced degree under section 203(b)(2) of the Act. That decision addressed the relationship between licensure requirements to practice dentistry and the advanced degree requirements. The decision was not published as a precedent and therefore does not bind USCIS officers in future adjudications. See 8 C.F.R. § 103.3(c). Non-precedent decisions apply existing law and policy to the specific facts of the individual case, and may be distinguishable based on the evidence in the record of proceedings, the issues considered, and applicable law and policy. The unrelated non-precedent decision cited by the Petitioner addresses the sufficiency of the labor certification educational requirements for the purposes of meeting the statutory requirements of an advanced degree. In contrast, this case centers on whether the Beneficiary's education meets the education requirements of the labor certification.

Although the evidence submitted by the Petitioner from DOPL indicates multiple types of mental health training programs may qualify for the educational requirements of clinical mental health counseling license, it is insufficient to demonstrate that the Beneficiary's education meets the requirements of the labor certification. The labor certification clearly indicates the education requirement of a U.S. master's degree, or its foreign equivalent, in counseling, social work or related field with no alternate combination of education and experience.

For the foregoing reasons, the Petitioner has not demonstrated the Beneficiary's possession of a U.S. master's, or foreign equivalent, degree in counseling, social work or related field, the minimum educational requirement of the offered position. We will therefore affirm the petition's denial.

ORDER: The appeal is dismissed.