U.S. Citizenship and Immigration Services

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

MATTER OF M-S-, INC.

DATE: FEB. 12, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a supermarket, seeks to employ the Beneficiary as an accounting system expert. It requests classification of the Beneficiary as a professional under the third preference immigrant category. *See* Immigration and Nationality Act (the Act) section 203(b)(3)(A)(ii), 8 U.S.C. § 1153(b)(3)(A)(ii). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with a baccalaureate degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition. The Director found that the Beneficiary does not have a bachelor's degree or a foreign equivalent degree, and therefore does not meet the minimum educational requirement for the job under the terms of the labor certification and does not qualify for classification as a professional under the Act.

On appeal the Petitioner asserts that the Director erred by not considering the documentation it submitted in response to a request for evidence (RFE). The Petitioner claims that the Beneficiary's three-year bachelor's degree from a university in India is equivalent to a U.S. bachelor's degree, thereby satisfying the minimum educational requirement of the labor certification and qualifying her for classification as a professional.

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 (ETA Form 9089, Application for Permanent Employment Certification) from the U.S. Department of Labor (DOL).[1] *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, 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

[1] The date the labor certification is filed with the DOL is called the "priority date." *See* 8 C.F.R. § 204.5(d).

Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national applies 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 regulation at 8 C.F.R. § 204.5(l)(3)(ii))(C) states that "[i]f the petition is for a professional, the petition must be accompanied by evidence that the [beneficiary] holds a United States baccalaureate degree or a foreign equivalent degree."

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

## II. ANALYSIS

At issue in this case is whether the Beneficiary's foreign degree is equivalent to a U.S. bachelor's degree, as required to meet the minimum educational requirements of the labor certification and to qualify for classification as a professional. Although not address by the Director, we will also consider whether the Beneficiary has the experience required to meet the terms of the labor certification. For the reasons discussed hereinafter, we conclude that the Beneficiary lacks both the education and the experience required for approval of this petition.

### A. Educational Requirements of the Labor Certification

In this case, section H of the accompanying labor certification specifies that the minimum educational requirement for the proffered position of accounting system expert is a bachelor's degree in the field of commerce or accounting, or a foreign educational equivalent.

Section J of the labor certification states that the Beneficiary's highest level of education with respect to the job offered is a bachelor's degree in commerce and accounting from [redacted] India, completed in 1993.

As evidence of the Beneficiary's education the Petitioner submitted a copy of the Beneficiary's diploma which indicates that the Beneficiary passed the "Bachelor of Commerce (Three-Year Integrated Course) degree examination" in the "subject of Financial Accounting and Auditing (Special)" in was awarded a Bachelor of Commerce degree from the [redacted] The Petitioner also submitted an "Evaluation of Academic Qualifications and Experience" from [redacted] asserting that the Beneficiary's three-year bachelor of commerce degree from the [redacted] was equivalent to three years of academic coursework at an accredited U.S. college or university, that the Beneficiary's eight years of experience in the field of computer information systems were equivalent to at least two additional years of bachelor's level education in the field of computer information systems, and that her education and experience combined was equivalent to at

least a bachelor's degree in computer information systems from an accredited college or university in the United States.

The Director issued an RFE advising the Petitioner that a three-year bachelor of commerce in India was comparable to at most three years of university-level study in the United States, which did not qualify the Beneficiary for the proffered position and the classification requested in the petition. The Petitioner was requested to submit additional evidence that the Beneficiary had a baccalaureate level degree in commerce or accounting which would meet the minimum educational requirements stated on the labor certification.

In response to the RFE the Petitioner submitted two new evaluations – one from of and the other from of that focused solely on the Beneficiary's educational credentials. Both evaluations concluded that the Beneficiary's three-year bachelor of commerce from the is equivalent to a bachelor of commerce from an accredited college or university in the United States. The Petitioner stated that the new evaluations from and were meant to replace the previously submitted The Petitioner also submitted copies of the Beneficiary's transcripts from her three academic years at the as well as a sworn statement from the Beneficiary declaring that she attended the from July 1990 to April 1993, passed the degree examination in April 1993, and "to the best of [her] recollection" attended school 200 days a year, four hours a day, adding up to approximately 800 hours each year and 2400 hours over three years.

In his denial decision the Director found that the Beneficiary's three-year Bachelor of Commerce degree from the is not a foreign equivalent degree to a U.S. baccalaureate degree. The Director stated that a U.S. baccalaureate degree is generally found to require four years of education, citing *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977). The Director referred to information from India's Department of Education that bachelor's degrees in certain professional fields require four years of study, but that bachelor's degrees in other fields such as arts, commerce, and science can be earned in three years. The Director noted that a four-year Indian degree may be considered equivalent to a U.S. baccalaureate degree, but reiterated that a three-year Indian degree such as the bachelor of science at issue in *Matter of Shah*, would not be considered the equivalent of a U.S. baccalaureate degree. The Director also referred to credential advice in the Educational Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO)[2] which evaluated a bachelor of science degree in

[2] AACRAO is described on its website as "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." AACRAO, http://www.aacrao.org/about (last visited November 30, 2017). "The mission of [AACRAO] is to provide professional development, guidelines, and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology, and student services." *Id.* EDGE is "a valuable resource for evaluating educational credentials earned in foreign systems." AACRAO EDGE, http://aacrao.org/aacrao-

India as comparable to no more than three years of university study in the United States. In this case, since the labor certification and the requested classification require a bachelor's degree or a foreign equivalent degree, the Director concluded that the Beneficiary did not qualify for the job offered or for classification as a professional.

On appeal the Petitioner identifies the materials submitted in response to the RFE that were not considered in a substantive manner in the Director's decision, including the educational evaluations from and which assert that the Beneficiary's three-year bachelor of commerce is equivalent to a U.S. bachelor's degree, several supporting documents appended to the and evaluations, and two documents from the American Immigration Lawyers Association (AILA). We will consider this evidence now.

USCIS considers equivalency evaluations of foreign academic credentials only as advisory opinions in adjudication process. However, where an evaluation is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988).

The evaluation asserts that the Beneficiary amassed 160 credit hours in her three-year Bachelor of Commerce program, thus exceeding the 120 credit hours which are typical for a four-year bachelor's degree in the United States. The evaluation places a credit hour number of 8, 9, or 10 next to each of the 17 courses the Beneficiary completed, and claims that the equivalency evaluation is "based on credentials from the University." However, no credentials from the pertaining to the Beneficiary accompany the evaluation, and the Beneficiary's transcripts do not reveal how many credit hours she received for any of her courses. The Beneficiary's own affidavit claims that she attended school for 2400 hours during her three-year degree program, which is unverified and does not explain how her alleged hours of attendance relate to the number of credit hours she completed. Thus, the evaluation's conclusion that the Beneficiary's three-year bachelor's degree from the is equivalent to a U.S. bachelor's degree has little probative value.

The evaluation, which comes to the same conclusion, is also minimally probative. It claims that the Beneficiary's alleged 2400 classroom hours equates to 160 semester credit hours, but relies exclusively on the Beneficiary's affidavit regarding the first figure, has no primary documentation of the latter figure, and does not explain how the latter figure derives from the first. does not address the Beneficiary's specific coursework at the nor does he indicate that he examined her coursework or transcripts.

In addition to their internal weaknesses, the and evaluations both conflict with the initial evaluation from which concluded that the Beneficiary's three-year Bachelor of Commerce

solutions/aacrao-international/aacrao-edge/edge (last visited November 30, 2017). We consider EDGE to be a reliable, peer-reviewed source of information about foreign degree equivalencies.

degree from the [redacted] is equivalent to three years of coursework at a U.S. college or university, not a full bachelor's degree. Given the deficiencies and discrepancies present in the submitted evaluations, the Director did not err in consulting EDGE. Federal courts have found EDGE 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 submitted opinion letters and educational evaluations submitted if they differ from reports in EDGE, which is "a respected source of information"). As noted, EDGE indicates that a bachelor of commerce degree in India requires two to three years of tertiary study and is comparable to two to three years of university study in the United States. According to EDGE, therefore, the Beneficiary's three-year bachelor of commerce from the [redacted] is comparable to three years of university study in the United States.[3] The EDGE credential advice is consistent with the initial evaluation the Petitioner submitted from [redacted]

Of the two AILA documents cited by the Petitioner on appeal, the first is a reprint of a 1995 memorandum of the former Immigration and Naturalization Service which, according to the Petitioner, states that credential evaluations submitted by professional credential evaluation services should not be challenged unless the *bona fides* of the evaluator is questioned. As discussed above, however, case law is clear that USCIS is not bound by the findings of any credential evaluation which we find questionable, and the evaluations submitted by the Petitioner are both questionable and conflicting. The second document is the AILA Liaison Committee Meeting notes of April 12, 2007, which recorded questions and answers about Indian degrees and equivalency evaluations, but made no finding regarding the U.S. equivalency of a three-year Indian degree. In any event, USCIS is not bound in its decision-making by internal memoranda or meeting notes. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which they may rely.") For the reasons discussed above, the AILA documents have no binding effect on USCIS in our adjudication of this petition.

As for all of the materials submitted in support of the [redacted] and [redacted] evaluations, the Petitioner has not established that any single document obligates U.S. entities like USCIS to accept a three-year degree from India as equivalent to a U.S. bachelor's degree. For example, the particular document cited by the Petitioner in response to the RFE – the "Recommendation on the Recognition of Studies and Qualifications" adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1993 – is by its very title is a "recommendation" rather than a binding commitment. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. Moreover, the Petitioner has provided no evidence that the instrument was signed by the United States or that it is a self-executing international agreement.

[3] *See* http://edge.aacrao.org/country/ credential/bachelor-of-art-ba-bachelor-of-comr (last visited November 30, 2017).

On appeal, the Petitioner also submits a letter from USCIS Chief James McCament to U.S. Representative Joseph Crowley in 2014 which stated that USCIS considers all opinions rendered by educational credentials evaluators, that USCIS may refer to other credible resources regarding the U.S. equivalency of foreign educational credentials, such as EDGE, and that none of these materials is binding on USCIS. As discussed in the letter, USCIS considers equivalency evaluations of foreign academic credentials as advisory opinions in adjudication process. However, where an evaluation is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. at 791; *Matter of Sea, Inc.*, 19 I&N Dec. at 817.

Based on the foregoing analysis of the record, we conclude that the Petitioner has not established that the Beneficiary has a foreign degree that is equivalent to a U.S. bachelor's degree. This conclusion takes into account the equivalency evaluations submitted in this proceeding, the credential advice from EDGE, and the other materials submitted in the adjudicatory process. Since the Beneficiary does not have a U.S. bachelor's degree or a foreign equivalent degree, she does not meet the minimum educational requirement of the labor certification. Accordingly, the petition cannot be approved.[4]

B. Professional Classification

As previously stated, a petition requesting professional classification "must be accompanied by evidence that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree." 8 C.F.R. § 204.5(l)(3)(ii)(C). As discussed above, the Petitioner has not established that the Beneficiary has such a degree. Therefore, she does not qualify for classification as a professional.

C. Experience Requirements of the Labor Certification

Although not addressed by the Director, we also find that the evidence submitted is insufficient to establish that the Beneficiary has the experience required by the labor certification. The labor certification in this case specifies that 60 months of experience was required in the job offered or as an accounts manager or accountant.

Section K of the labor certification states that the Beneficiary began working for the Petitioner as an accounts manager in October 2008 and was previously employed by [redacted] in [redacted]

[4] In reviewing the Beneficiary's educational documents, we note some anomalies in the transcripts. For example, each year's transcript has a different format. The letterhead of each transcript varies, with the institution identified on the first year transcript as [redacted] on the second year transcript as [redacted] and on the third year transcript simply as [redacted] The Beneficiary's seat number also varies from year to year. In the first year it was identified as 4439; in the second year it appears to have been 7360 (although the number is not actually identified as a seat number); and in the third year it was identified as 12899. In any future proceedings these anomalies should be explained by the Beneficiary.

India, as an accounts manager from May 1996 to January 2002. As described in the labor certification, the Beneficiary's job duties with [redacted] included being responsible for all the incoming and outgoing shipments, maintaining daily ledger and cash flow, accounts receivable and payable, payrolls and stock register, as well as preparing financial statements and complying with local sales tax laws. In order to establish that the Beneficiary has the claimed experience, the Petitioner must submit "letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien." 8 C.F.R. § 204.5(l)(3)(ii)(A)

The Petitioner submitted letters from two companies in [redacted] India, claiming to have employed the Beneficiary, including (1) [redacted] which certified that it employed the Beneficiary as a computer programmer from April 1994 to June 1998, and (2) [redacted] which certified that it employed the Beneficiary in a computer-oriented position (the job title was not identified) from November 1998 to November 2002.

Neither of the employment verification letters submitted with the petition was from [redacted] the employer listed on the labor certification. The information in the letters contradicts the information provided in the labor certification with respect to the identity of the employer(s) in [redacted] the time frame(s) of the employment in [redacted] and the job duties performed in [redacted] It is incumbent upon a petitioner to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. *See Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The Petitioner has not submitted documentary objective evidence to establish the Beneficiary's true employment history.

Moreover, the fact that no employment with [redacted] or [redacted] was claimed in the labor certification lessens the credibility of the letters from these two companies, which were submitted with the petition. *See Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976). We also note that both of the letters appear to have inconsistent fonts, casting further doubt on their reliability. We conclude, therefore, that the Petitioner has not established any qualifying experience for the Beneficiary based on the letters from [redacted] and [redacted]

Further, as there is no evidence of the Beneficiary's employment by [redacted] from 1996 to 2002, the Petitioner has not established that the Beneficiary has the experience claimed on the labor certification. Therefore, the Petitioner has not demonstrated that the Beneficiary has 60 months of qualifying employment, as required by the labor certification.

## III. CONCLUSION

The Beneficiary does not meet the minimum educational requirements of the labor certification and for classification as a professional. Furthermore, the Beneficiary does not have the experience required by the terms of the labor certification.

**ORDER**: The appeal is dismissed.

Cite as *Matter of M-S-, Inc.*, ID# 917637 (AAO Feb. 12, 2018)