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AAO RULES THAT MBBS DEGREE QUALIFIES UNDER THE EMPLOYMENT-BASED SECOND PREFERENCE

Posted on January 15, 2009 by Cyrus Mehta

by
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In recent times, attorneys who have been representing foreign physicians with an MBBS (Bachelor of Medicine and Bachelor of Surgery) degree have reported that the USCIS Nebraska Service Center (NSC) and Texas Service Centers (TSC) have rejected arguments that the MBBS qualifies as an advanced degree. Since the MBBS is normally awarded as a first degree in countries such as India and Pakistan, after 12 years of secondary school education, the USCIS has taken the position that an MBBS does not qualify as an advanced degree.

The pertinent regulation, 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 a baccalaureate."

Interpreting this provision narrowly, the USCIS has asserted that unlike a US Doctor of Medicine (M.D.) degree, the MBBS degree is not awarded after a baccalaureate degree and thus does not qualify as an advanced degree. Furthermore, the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) ambiguously states that an MBBS from India equates to a first professional degree in medicine in the United States. Thus, till recently, it was the position of the USICS that a beneficiary with an MBBS degree could not qualify under the Employment-based Second Preference (EB-2), which is more advantageous than the Employment-based Third Preference (EB-3) with respect to processing times. The EB-2 is applicable to occupations that require an advanced degree and the beneficiary is able to prove that he or she possesses the US advanced degree or the foreign equivalent.

Fortunately in a recent decision, *Matter of Norman Regional Hospital*, SRC 198 51124 (AAO January 09 2009), available at http://www.ilw.com/immigdaily/cases/2009,0114-norman.pdf, the Administrative Appeals Office strongly disagreed with the TSC, which denied the I-140 petition on the ground that the beneficiary did not qualify under the EB-2 by virtue of his MBBS degree as it did not equate to a US M.D. degree. The AAO reasoned that since the MBBS degree did indeed equate to an M.D. degree, the beneficiary met the requirements of the labor certification, which required an M.D. degree or a foreign equivalent to a US medical degree. The beneficiary possessed a five-year MBBS degree from the University of Poona, India and was being sponsored by a hospital in Oklahoma as an interventional radiologist. He also demonstrated his eligibility to practice medicine in Oklahoma.

Specifically, the labor certification, ETA Form 9089, in the instant decision, required an MD degree with respect to the educational requirements for the occupation. In the alternative, the employer indicated in part H, section 9 of the ETA Form 9089 that it would accept the foreign educational equivalent to a U.S. medical degree. The AAO decision referred to EDGE, a web-based resource created by AACRAO as the definitive source for the evaluation of foreign educational credentials and degree equivalencies that is continually updated and revised by staff and members of AACRAO. Since EDGE categorically stated that the MBBS from India "represents the attainment of a level of education comparable to a first professional degree in medicine in the United States," the AAO logically reasoned that a first professional degree within the United States includes a Doctor of Medicine (M.D.).

Interestingly, the AAO also reminded the TSC that the job requirements in the labor certification must be interpreted in the plain language of the labor certification. The AAO further opined that "USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification."

It is hoped that the NSC and the TSC will take heed of this admonition from the AAO and interpret the employer's foreign equivalent degree requirements according to the plain language of the labor certification, and specifically, to examine the requirements of the position exactly as completed by the

prospective employer and certified by DOL. In recent times, even with respect to degrees other than the MBBS, the NSC and the TSC have played a game of "gotcha" by arbitrarily denying I-140 petitions on the ground that the beneficiaries' equivalent degrees did not meet the requirements of the labor certifications. While the AAO decision is limited to whether MBBS degrees equate to US M.D. degrees, it is hoped that the AAO will continue to reverse denials of the NSC and TSC, which are similarly arbitrary and contradict reasoned foreign equivalency determinations by EDGE or other recognized private evaluators.

Also, in an analogous situation to the MBBS, the USCIS has been denying petitions where the beneficiary demonstrates a five-year (as opposed to a six-year) Master's degree, even where, according to EDGE or credible foreign equivalency experts, the foreign degree program equates to a Master's degree program in the US that can be obtained after one year of studies following a bachelor's degree. With regard to this situation too, practitioners may wish cite to the AAO's holding in *Norman Regional Hospital* to argue that the USCIS must interpret the labor certification according to its plain language.

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