

GLOBAL CAP BENEFICIARY!
ABCs OF H-1Bs (THIS IS PART IV OF AN VIII PART SERIES): THE WHYS AND
HOWS OF EDUCATION AND/OR EXPERIENCE EVALUATIONS IN THE
CONTEXT OF H-1B VISA PREPARATION AND FILING.

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The threshold question for an H-1B nonimmigrant work visa is whether the intending H-1B nonimmigrant has the equivalence of a U.S. Bachelor's Degree. Most of the prospective H-1B employees and H-1B employers begin with either of the following two thoughts: *"I would like to work in the U.S. using an H-1B visa, but am not sure if I qualify"* or *"I want to hire a foreign worker but not sure if the individual qualifies for an H-1B visa."*

As briefly touched upon in Part I of this VIII Part H-1B series, it is mandatory that not only the prospective H-1B employee ("H-1B employee" or "Beneficiary") but *both* the proffered position and prospective employee should be qualified to be able to obtain the H-1B nonimmigrant work visa. Building upon the previous articles, the following will explore the importance of educational and/or experience equivalency evaluations, and explain precautions that an employer and/or prospective H-1B employee can take in order to avoid a dreaded Request-for-Evidence (RFE) and/or Notice of Intent To Deny (NOID) the H-1B nonimmigrant petition.

For a proffered H-1B position to qualify for an H-1B visa, it must be in a "Specialty Occupation". As previously pointed out, a specialty occupation is an occupation is one that requires: (1) a theoretical and practical application of a body of highly specialized knowledge; and (2) the attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States. Additionally, with regard to a prospective H-1B employee, regulations specify that the individual must possess either a United States baccalaureate (or its equivalent) or higher degree required by the specialty occupation from an accredited college or university OR hold an unrestricted state license, registration or certification which authorizes the prospective H-1B employee to fully practice the specialty occupation. Also, having education, specialized training, and/or progressively responsible experience that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation, and having recognition of expertise in the specialty through progressively responsible positions directly related to the specialty could qualify the individual for an H-1B visa.

Employers should be mindful that if the proposed H-1B nonimmigrant Beneficiary is educated outside the U.S., the employer will need to determine whether the foreign education is equivalent to a United States baccalaureate or higher degree.

It is extremely important to understand that just because the degree states that it is a bachelor's degree it does not necessarily mean that it is automatically equivalent to a United States bachelor's degree. For example, in India (and other countries throughout the world) there are both three and four-year bachelor's degrees. Generally (but not always), the three-year degrees are equivalent to three years of undergraduate coursework at a U.S. institution of higher learning. Four-year degrees from India can generally be considered to be equivalent of a U.S. bachelor's degree.

Also worth highlighting is that a general degree may not qualify an individual for an H-1B visa because of the absence of specialized experience as there must be a showing of a degree in

“specialized field”. However, in these kinds of situations, when a Beneficiary’s bachelor’s degree (or its equivalence) is not directly related to the proffered position, it is important to evaluate the Beneficiary’s academic course work related to the occupation to determine his/her qualifications.

Consider, for example, the case of a prospective Beneficiary for an H-1B petition for the position of Accountant who holds a degree in Business Administration. Sometimes the degree may be even further unrelated to the position being taken by the proposed H-1B Beneficiary.

Generally, a degree in Business Administration may not satisfy the requirement that the prospective H-1B Beneficiary have a degree in a specialty occupation because of the general, non-specific nature of the coursework required for this type of degree. The prospective H-1B Beneficiary may, however, have taken a significant number of accounting courses while obtaining his/her degree in Business Administration. These accounting courses may be presented as part of the legal argument that demonstrates that the Business Degree in question may be sufficient to establish that the alien has the required education in a “specialty” occupation for H-1B purposes.

Note that an evaluation of education by a credentials evaluation service, which specializes in evaluating foreign education credential, is “*advisory*” only. The United States Citizenship and Immigration Service (USCIS) does not endorse or recommend any particular educational or experiential evaluator. It is important to note that some evaluators specialize in “educational” equivalency evaluations. Some evaluation services specialize in “experience” evaluations. In addition, there are some organizations that are situated to perform a combined “educational and experience evaluation”. If you or a member of your staff may be looking for an appropriate credentials evaluation service provider, we recommend that you consider their track-record.

When seeking guidance with regard to educational or experience equivalency there are many services available that can assist the employer or the prospective H-1B employee. Very important for H-1B employers and employees to know is that equivalency evaluations must come from a reliable credentials evaluation service which specializes in evaluating foreign education and/or experiential credentials. If the equivalency evaluation is not issued by a “reliable” credentials evaluation service, USCIS, in past, has issued RFE documents questioning the reliability of the credentials evaluation.

To avoid such RFEs, it is important to make sure that the organization or service that performs the pure “educational” equivalency evaluation should: (1) Consider formal education only, not practical experience; (2) State if the collegiate training was post-secondary education, (i.e., whether the applicant completed the U.S. equivalent of high school before entering college); (3) Provide a detailed explanation of the material evaluated rather than a simple concluding statement; and (4) Provide qualifications and experience of the evaluator providing the opinion.

Even if the prospective H-1B Beneficiary does not hold a bachelor’s degree or its equivalent in a specific area of study required by the proffered position, she or he may qualify for an H-1B visa. The prospective H-1B Beneficiary’s education, specialized training, and/or progressively responsible experience may be recognized as equivalent to a baccalaureate degree (commonly referred as the “educational and experience evaluation”) provided the H-1B Beneficiary has knowledge, competence, and practice in the specialty occupation that has been determined to be the equivalence to a baccalaureate or higher degree.

The educational and experience evaluation may be deemed to be equal to a U.S. baccalaureate or

higher degree through *one or more* of the following factors: (A) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience; (B) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP) or Program on Non-collegiate Sponsored Instruction (PONSI); (C) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign education credentials; (D) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty; (E) A determination by the USCIS that the equivalent of the degree required has been acquired through a combination of education, specialized training and/or work experience and that the Beneficiary has also achieved recognition of expertise in a specialty occupation as a result of such training and experience

With regard to the first option (evaluation from an official who has authority to grant college-level credit) for proving educational and experience evaluation equivalent to a U.S. baccalaureate or higher degree, USCIS's Adjudicator's Field Manual (AFM) clarifies that an official must be "formally involved with the college or university's official program for granting credit based on training and/or experience to have the required authority and expertise to make such evaluations."

When proving equivalency through "education and experience", the equivalency evaluator needs to be cognizant of the fact that: the Beneficiary's training and/or work experience includes "a theoretical and practical application of specialized knowledge" required by the specialty; and, the claimed experience was gained while working with peers, supervisors, and/or subordinates who have a degree or equivalent in the specialty.

The USCIS regulations set forth a rule-of-thumb equivalency protocol or methodology called the "3-to-1 rule". The 3-to-1 rule states that a bachelor's degree equivalency can be demonstrated through a combination of education, specialized training, and/or work experience. Simply put, three years of specialized training and/or progressively-responsible related work experience can be used to demonstrate a year of college-level academic training that the prospective H-1B Beneficiary may lack.

As to the last option (if USCIS itself makes the determination regarding whether the Beneficiary holds an equivalent of the bachelor's degree), the Beneficiary needs to show recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (1) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (2) Membership in a recognized foreign or U.S. association or society in the specialty occupation;
- (3) Published material by or about the alien in professional publications, trade journals, or major newspapers;
- (4) Licensure or registration to practice the specialty occupation in a foreign country; or,
- (5) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

In conclusion, provided that the proffered job qualifies as a specialty occupation, it is imperative to show that the prospective H-1B Beneficiary holds either a U.S. baccalaureate or higher degree or its equivalent in the field. The equivalency can be demonstrated through the use of an educational evaluation or through a combined experience and educational evaluation. In some cases, a pure experience equivalency evaluation may be possible. If the employer submits an educational equivalency evaluation, it should come from a reliable credentials evaluation service

which specializes in evaluating foreign education credentials. The baccalaureate or higher degree equivalency through educational and experience evaluation can be proved through one or more of the above-mentioned five (5) options. Finally, there are additional requirements that the prospective H-1B Beneficiary needs to satisfy if USCIS makes its own determination about whether the H-1B candidate holds the equivalent of a U.S. bachelor's degree or higher educational degree required by the specialty occupation.

For more information about the H-1B nonimmigrant work visa process or to consider H-1B nonimmigrant work visa options, the immigration and nationality lawyers and attorneys at the Nachman Phulwani Zimovcak (NPZ) Law Group, P.C. invite you to visit them on the web at www.visaserve.com or to email them at info@visaserve.com or to call the firm at 201.670.0006 (x107).