

PREFACE*

“When I use a word,’ Humpty Dumpty said in rather a scornful tone, ‘it means just what I choose it to mean—neither more nor less.’”

“One of the deep secrets of life is that all that is really worth the doing is what we do for others.”

—Lewis Carroll

When *AILA’s Focus on EB-2 & EB-3 Degree Equivalency* was published in November 2007, it filled a vacuum and quickly became the standard desktop reference on degree equivalency issues in labor certification applications and I-140 petitions in the employment-based second (EB-2) and third (EB-3) preference categories. Over the five-year period since the book’s publication, the “law”—or, more accurately, the slippery, ad hoc rules of degree equivalency—have evolved and have become more simplified in the majority of cases and yet more complex and difficult than ever in others.

In 2007, degree equivalency issues stemmed from U.S. Citizenship and Immigration Services (USCIS) creating its ad hoc rules on the fly, and failing to articulate and communicate what those rules were to petitioners. Since then, the Administrative Appeals Office (AAO) and USCIS service centers have adopted a reasonably objective source for degree equivalency information that is accessible to petitioners and their attorneys. An objective source that is accessible to all is what was needed all along; the government’s primary failing had been (and continues to be) its lack of interest in communicating its ad hoc rules to its stakeholders in any form other than piecemeal, unpublished case decisions, forcing petitioners to piece together isolated sets of information and experience to try to guess what the government’s position will be in a particular case.

Once it became clear that USCIS had adopted an objective source for degree equivalency information that was, indeed, accessible to all, I had expected that degree equivalency would soon cease to be the absurdly

* **DISCLAIMER:** The suggestions, practice tips, and opinions presented in this book are solely those of the author and should not be construed as legal advice, but should instead be tempered with direct experience. They are based on the information available at the time of publication, and due to the constantly evolving nature of adjudication standards and policies in this area of practice, important details may be expected to change over time without notice.

frustrating problem that it had become. Unfortunately, an equally important development since 2007 is that the Board of Alien Labor Certification Appeals (BALCA) and the U.S. Department of Labor (DOL) have resurrected their own parallel universe of degree equivalency issues by reasserting their wonderland of counter-intuitive ad hoc rules for specific vocational preparation and substantial equivalence—rules that are only partially and inconsistently followed by DOL (assuming the role of The Mad Hatter) in actual adjudications of labor certification applications.

The utter incongruity between the USCIS and DOL “rules,” as well as the inconsistent application by DOL of interpretations articulated in BALCA decisions, has created yet another byzantine gauntlet of hurdles facing petitioners and their attorneys. A familiar story repeats itself, and degree equivalency issues continue to materialize from unexpected sources.

As with the original volume, the purpose of this Supplement is to assist attorneys in understanding and applying the elusive, constantly shifting ad hoc rules that govern degree equivalency determinations for labor certifications and I-140 petitions in the EB-2 and EB-3 categories. By understanding the many factors that can affect the contours of these ad hoc rules, we can gain insight on how to structure PERM applications to minimize risks and maximize the success of green-card applications in the EB-2 and EB-3 categories.

We also can understand how each new decision or shift in adjudication policy changes the landscape, and spot issues that may be appealed successfully to BALCA, the AAO, and the federal courts. Constant vigilance and flexibility are the virtues needed to negotiate the still-treacherous waters of degree equivalency.

Many attorneys have contacted me over the years with their degree equivalency questions, and for that I am very grateful. Their case questions became the central focus of my year-long series of articles on degree equivalency published in *Bender's Immigration Bulletin* from 2009–10 under the heading, “The Nth Degree—Issues and Case Studies in Degree Equivalency,” which served to update and illustrate how to understand and apply the various ad hoc degree equivalency rules. Those articles have served as an important foundation for this Supplement. Having exposure to a broader range of real world cases than my modest practice would allow enables me to see and report the bigger picture to all.

Accordingly, I encourage attorneys to continue to contact me with their case questions for as long as degree equivalency issues persist, and I will do my best to synthesize and report these developments to all.

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December 2012