

BOOK REVIEW: AILA'S FOCUS ON EB-2 & EB-3 DEGREE EQUIVALENCY BY RONALD Y. WADA

268 pages including Appendices and Index. American Immigration Lawyers Association.

\$129. Member Price \$79.

BY NAOMI SCHORR

Let there be joy in the land! If you thought that the murky law of degree equivalency for employment-based immigrant visa petitions was beyond comprehension, here is a book for you. In a world gone crazy with overstatement, pretension, unkept promises, and just plain shenanigans, here's something that actually does what it says it's going to do. In the words of our new national anthem, "At Last."

"The purpose of this book," Ron Wada explains in the preface to this significant contribution to the field, "is to assist attorneys in understanding and applying the elusive, constantly shifting, 'ad hoc' rules that govern degree equivalency determinations for I-140 petitions in the employment-based second. . . and third. . . preference categories, particularly for beneficiaries who hold three-year bachelor's degrees."

Anyone who thinks he can't use that "assistance" is seriously out of touch with EB-2 and EB-3 adjudications at the Nebraska and Texas Service Centers, where case denials based on degree equivalency issues are legion and the decisionmaking rules are not only "shifting," as Wada states, but almost incomprehensible, at least to this writer. The most recent stir, too new to be included in Wada's book, was generated by several decisions coming out of the Texas Service Center denying EB-2 petitions for physicians holding a Bachelor of Medicine & Bachelor of Surgery (MBBS) degree, under the theory that a bachelor's degree is not an "advanced" degree, and hence cannot support EB-2 classification. Let's hope that this particular three-alarm fire has been extinguished by an AAO decision issued in January 2009,¹ which determined that because the level of education required for the issuance of an MBBS degree (from India in this case) is the equivalent of that required for a U.S. Doctor of Medicine degree, the MBBS should be deemed an advanced degree for EB-2 purposes.

Wada, who has a background in physics, engineering, and law, approaches his subject as would a scientist: with clarity, economy, and practicality. This is done in a carefully mapped out book of just four chapters, comprising only 52 pages. The rest of the book's 265 pages, a variety of appendices, contain important agency memoranda, AAO decisions, federal court decisions, Wada's earlier articles, and AILA liaison minutes. All useful, of course, but not as much as those 52 carefully crafted pages, which methodically lay out the problems, provide interpretations, offer practice pointers, and set forth, in table form no less, clear scenarios for success in EB-2 and EB-3 cases.

Chapter 1, "Introduction and Recent History," presents in only 10 pages the history and legal foundation of degree-equivalency problems that have plagued I-140 adjudications in recent years. In a brilliant analysis of the legal authorities that the USCIS may rely upon in its decisionmaking process, Wada finds four basic categories:

1. Solid (binding on the USCIS and unlikely to change). This group includes agency regulations;
2. Plastic (binding on the agency but subject to change). In this group, he includes case law and agency memoranda;
3. Fluid (not binding on USCIS, but potentially influential). This group includes unpublished AAO decisions and federal district court decisions; and
4. Ethereal (least reliable and subject to change at any time). Here, Wada includes service center guidelines as published in liaison minutes.

I must admit that after reading the first chapter, with its profound intelligence and scientific-like classifications, I sat straight up and smiled. "This book," I thought, "is going to be good." When I turned to Chapter 2 and saw its heading, "Seven Essential Concepts for EB-2 & EB-3 Degree Equivalencies," I felt a little uneasy. "Don't tell me," I thought, "that this is going to be like those books setting forth the seven habits of highly effective

¹ Matter of Norman Regional Hospital, SRC-08-198-51124 (AAO Jan. 9, 2009), *available at* <http://www.aila.org/infonet> (document no. 09011320) (with party names redacted) and <http://bibdaily.com/pdfs/AAO%201-9-09%20degree%20equiv%20EB-2.pdf>.

people.” Happily, it’s not. This chapter really *is* essential, and very helpful, reminding the reader that a foreign equivalent education is not the same as a foreign equivalent degree, that different rules apply to the EB-2 and EB-3 categories, that ambiguity in the definition of “or equivalent,” as in a requirement on a labor certification application for a “bachelor’s degree or equivalent,” can lead to the denial of an I-140 petition, that the problem with three-year bachelor’s degree programs is not limited to degrees from India, and that “cookie cutter” credential evaluations are generally ineffective. Each of the seven essential concepts comes equipped with explanation, examples, and plenty of practice tips.

If you read nothing else in this book, you *must* read Chapter 3, “Degree Equivalency for PERM,” which, standing on its own, is worth the purchase price. This chapter offers up the common pitfalls that practitioners fall prey to when developing the degree requirements for labor certification applications, and provides indispensable advice for both EB-2 and EB-3 cases. Just the table that appears on pages 25 through 27 of this chapter makes this book a must-have. There, Wada has devised a three-column chart that presents thirteen common EB-2 scenarios. One column lists the degree that the beneficiary has, one column the likelihood of success at the Nebraska Service Center and the Administrative Appeals Office, and the final column the ad hoc rules that have evolved and the author’s comments about those rules. Later in the chapter, when addressing EB-3 cases, Wada provides eight examples of equivalency language that can be effective in defining an alternative degree requirement when the foreign national does not have a U.S. bachelor’s degree or a foreign equivalent degree, e.g., “Will accept a combination of degrees”; “Will accept three- or four-year degrees”; “Will accept educational equivalency evaluation prepared by qualified evaluation service or in accordance with 8 CFR §214.2(h)(4)(iii)(D).” This really is essential reading.

Chapter 4, “Appealing to the AAO and the Federal Courts,” is the chapter of last resort. Anyone who had followed Wada’s prescriptions in the first three chapters would not likely find himself in the position of appellant, but if there, this chapter is valuable for summarizing several of the leading federal court decisions: *Grace Korean United Methodist Church v. Chertoff*, *SnapNames.com v. Chertoff*, and *Hoosier Care v. Chertoff*.²

While my praise for Wada’s contribution to this field is almost without qualification, there are certain ways in

which this publication could have been better. It has always seemed to me that the “look” of a book, if not first rate, can detract from the authoritativeness of its content. And here the publisher should have served Wada better. Some of the quotations are not sufficiently differentiated from text, making it difficult to figure out who’s saying what, and several of the appendices look like scans of photocopies of faxes, with blurry and broken text, making it a task to read. And as much as I praise Wada for his brilliant contribution to this area of the law, my biggest criticism must be leveled at him. An American journalist and wit once criticized a book by saying, “The covers of this book are too far apart.” My main criticism of Ron Wada’s book is that the covers are too close together.

Some people like their information pared down to the bone. Others, myself included, like to shoot the breeze and enjoy a chatty, mordant manuscript, filled with opinion, metaphor, even the occasional joke. You’re not going to find that in Wada’s text. But of course, this is just a matter of taste, and what, after all, is a book review other than one person suggesting that his taste might be better than someone else’s? Had Wada decided to write a different kind of book, he might have woven in more discussion of the material he only refers to in the book’s many appendices. For example, he might have taken the time to analyze *Matter of Shah*,³ the precedent decision the USCIS frequently relies on for the proposition that an Indian three-year bachelor’s degree is not equivalent to a U.S. bachelor’s degree. Would any of this help the practitioner in his everyday work? Not really. I guess it depends on which school of thought you belong to: those who say, “Good things, when short, are twice as good,” or those who say, “You can never get enough of a good thing.”

Naomi Schorr (nschorr@kramerlevin.com) is Special Counsel at Kramer Levin Naftalis & Frankel LLP in New York City, where she practices in the firm’s Business Immigration Group. She received the Edith Lowenstein Memorial Award from the American Immigration Lawyers Association for Excellence in Advancing the Practice of Immigration Law in 2007. She is a member of the *Bulletin*’s Editorial Board. © Naomi Schorr, all rights reserved.

² *Grace Korean*, 437 F. Supp. 2d 1174 (D. Ore. 2005); *SnapNames.com*, 2006 U.S. Dist. LEXIS 87199 (D. Ore. Nov. 20, 2006); *Hoosier Care*, 482 F. 3d 987 (7th Cir. 2007).

³ *Matter of Shah*, 17 I. & N. Dec. 244 (Reg’l Comm’r 1977).