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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

PUBLIC COPY

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FILE: [REDACTED]
LIN 05 016 51729

Office: NEBRASKA SERVICE CENTER

Date: DEC 18 2006

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a corporation whose business is “high tech [technology] consulting.” It seeks to employ the beneficiary permanently in the United States as a computer support specialist pursuant to Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary does not have a Bachelor Degree in Business or Computer as required by the labor certification. Therefore, the director denied the petition accordingly.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 8 C.F.R. § 204.5(l)(2) states, in pertinent part:

“*Professional* means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.”

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

Professionals. If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on October 16, 2001.¹ The proffered wage as stated on the Form ETA 750 is \$32,000.00 per year.

On appeal, counsel submits a legal brief and additional evidence.

¹ It has been approximately five years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states “The wage offered equals or exceeds the prevailing wage and I [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work.”

With the petition, counsel submitted copies of the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor; a letter from the petitioner dated October 4, 2004; a credential evaluation by the Foundation for [REDACTED] dated April 24, 2000; a letter from [REDACTED] Ph.D. dated September 15, 2000, opining upon the beneficiary's educational and professional work experience; a graduation certificate² and its translation from the China Correspondence College of Computer dated March 1993; a graduation certificate and its translation from the Nanjing Institute of Posts & Telecommunications;³ a letter dated May 28, 2001, from China Telecom stating that the beneficiary worked as a computer sales/support specialist from March 1991 to August 1999; the biographic page from the beneficiary's People's Republic of China (P.R. China) passport; the beneficiary's U.S. visa; CIS Forms I-797A; three Wage and Tax Statements (W-2); an undated portion of the beneficiary's pay statement; and, U.S. Internal Revenue Service Form 1120S tax returns for 2000, 2001 and 2002.

In determining the respective jurisdictions of the U.S. Department of Labor (DOL) and the Citizenship and Immigration Services (CIS), one may turn to the entire body of recent court proceedings interpreting the interplay of the agencies and strictly confining the final determination made by the Department of Labor. See *Stewart Infra-Red Commissary, Etc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981); *Denver Tofu Company v. District Director, Etc.*, 525 F. Supp. 254 (D. Colo. 1981); and, *Joseph v. Landon*, 679 F.2d 113 (7th Cir. 1982).

These cases recognize the labor certification process and the authority of the Department of Labor in this process stem from section 212(a)(5)(A) of the Act, 8 U.S.C. 1182(a)(5)(A). In labor certification proceedings, the Secretary of Labor's determination is limited to analysis of the relevant job market conditions and the effect that the grant of a visa would have on the employment situation. CIS, through the statutorily imposed requirement found in section 204 of the Act, 8 U.S.C. 1154, must investigate the facts in each case and, after consultation with DOL, determine if the material facts in the petition including the certification are true.

Although the advisory opinions of other Government agencies are given considerable weight, CIS has authority to make the final decision about a beneficiary's eligibility for occupational preference classification. The Department of Labor is responsible for decisions about the availability of United States workers and the effect of a prospective employee's employment on wages and working conditions. The Department of Labor's decisions concerning these factors, however, do not limit the CIS's authority regarding eligibility for occupational preference classification. Therefore, the issuance of a labor certification does not necessarily mean a visa petition will be approved.

As already stated, the issue to be discussed is whether the beneficiary meets the job requirements of the proffered job as set forth on the subject labor certification. As noted above, the Form ETA 750 in this matter is certified by DOL.

According to the regulation at 20 C.F.R. § 656.20(c), an employer applying for a labor certification must "clearly show" that:

- (1) The employer has enough funds available to pay the wage or salary offered the alien;

² According to the certificate, the beneficiary studied "Microcomputer Application" from March 1991 to February 1993, and, she had attained a graduation certificate evidencing her satisfactory studies.

³ According to the certificate, the beneficiary studied "Business Management of Posts & Telecommunications" from August 1993 to July 1995, and, she had attained a graduation certificate evidencing her satisfactory studies.

(2) The wage offered equals or exceeds the prevailing wage determined pursuant to § 656.40, and the wage the employer will pay to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work;

(3) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis;

(4) The employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States;

(5) The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;

(6) The employer's job opportunity is not:

(i) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or

(ii) At issue in a labor dispute involving a work stoppage;

(7) The employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law; and

(8) The job opportunity has been and is clearly open to any qualified U.S. worker.

(9) The conditions of employment listed in paragraphs (c) (1) through (8) of this section shall be sworn (or affirmed) to, under penalty of perjury pursuant to 28 U.S.C. 1746, on the Application for Alien Employment Certification form.

The regulation at 20 C.F.R. § 656.21(a) requires the Form ETA 750 to include:

(1) A statement of the qualifications of the alien, signed by the alien; [and]

(2) A description of the job offer for the alien employment, including the items required by paragraph (b) of this section.

Finally, the regulation at 20 C.F.R. § 656.24(b) provides that the DOL Certifying Officer shall make a determination to grant the labor certification based upon the following criteria:

(1) The employer has met the requirements of this part. However, where the Certifying Officer determines that the employer has committed harmless error, the Certifying Officer nevertheless may grant the labor certification, Provided, That the labor market has been tested sufficiently to warrant a finding of unavailability of and lack of adverse effect on U.S. workers. Where the Certifying Officer makes such a determination, the Certifying Officer shall document it in the application file.

(2) There is in the United States a worker who is able, willing, qualified and available for and at the place of the job opportunity according to the following standards:

(i) The Certifying Officer, in judging whether a U.S. worker is willing to take the job opportunity, shall look at the documented results of the employer's and the Local (and State) Employment Service office's recruitment efforts, and shall determine if there are other appropriate sources of workers where the employer should have recruited or might be able to recruit U.S. workers.

(ii) The Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed, except that, if the application involves a job opportunity as a college or university teacher, or for an alien whom the Certifying Officer determines to be currently of exceptional ability in the performing arts, the U.S. worker must be at least as qualified as the alien.

(iii) In determining whether U.S. workers are available, the Certifying Officer shall consider as many sources as are appropriate and shall look to the nationwide system of public employment offices (the "Employment Service") as one source.

(iv) In determining whether a U.S. worker is available at the place of the job opportunity, the Certifying Officer shall consider U.S. workers living or working in the area of intended employment, and may also consider U.S. workers who are willing to move from elsewhere to take the job at their own expenses, or, if the prevailing practice among employers employing workers in the occupation in the area of intended employment is to pay such relocation expenses, at the employer's expense.

(3) The employment of the alien will have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination the Certifying Officer shall consider such things as labor market information, the special circumstances of the industry, organization, and/or occupation, the prevailing wage in the area of intended employment, and the prevailing working conditions, such as hours, in the occupation.

It is significant that none of the above statutory mandated inquiries assigned to DOL involve a determination as to whether or not the alien is qualified for the job offered. The federal court in *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983) stated in pertinent part:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14). *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14)

determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

* * *

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Relying in part on *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983), the Ninth Circuit Court of Appeals in *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983) stated in pertinent part:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

Id. at 1008. The court in that case relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F.2d 1305, 1309 (9th Cir. 1984).

The director determined on April 27, 2005, that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree in the major fields of study, Business or Computer. The director determined that the petitioner failed to establish that the beneficiary had met the minimum qualifications of the Alien Employment Certification accompanying the petition specified

In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. *See* 8 C.F.R. § 103.2(b)(16)(ii). The AAO reviews appeals on a de novo basis. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). It is worth emphasizing that that each petition filing is a separate proceeding with a separate record. *See* 8 C.F.R. § 103.8(d).

Upon appeal, counsel asserts that the director "misrelated our submitted documents." Counsel states the director misquoted the opinion about the equivalency of the beneficiary's education made by [REDACTED] Ph.D. as found in his letter dated September 15, 2000, and, that the director made an "incorrect denial decision." This contention will be discussed below.

On appeal, counsel submitted copies of the following documents: the Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor; a letter from the petitioner dated October 4, 2004; a credential evaluation by the Foundation for [REDACTED] dated April 24, 2000; a letter from [REDACTED] Ph.D. dated September 15, 2000, opining upon the beneficiary's educational and professional work experience; and, the director's decision dated April 27, 2005, as well as other documents.

Moreover, to determine whether a beneficiary is eligible for a preference immigrant visa, CIS must ascertain whether the alien is, in fact, qualified for the certified job. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, item 14, sets forth the minimum education, training, and experience that an applicant must have for the position of computer support specialist.

In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | |
|-------------------------|-----------------------------|
| 14. Education | |
| Grade School | Blank |
| High School | Blank |
| College | 4 |
| College Degree Required | <u>Bachelor</u> |
| Major Field of Study | <u>Business or Computer</u> |
| Training | Blank |

Experience	
Job Offered - Years/Mos.	<u>1/0</u>
Related Occupation (specify)	Blank
Years/Mos.	Blank

The employer who is the petitioner has prepared the above ETA 750 Part A as an essential part of the labor certification process used to support a preference visa petition that is employment based. The employer who desires to employ an alien in the United States must undertake a multiple step process as directed by the United States Department of Labor which, once approved, certifies the Alien Employment Application for the occupation based upon the above criteria. In the present case, the above requirements state that the occupation of computer support specialist requires a Bachelor Degree in the major fields of study of Business or Computer.

Along with Form ETA 750, Part A, set forth above, the employer also is required to submit Form ETA 750, Part B that is a "Statement of Qualifications of Alien." Part B identifies the alien, specifies his/her current and prospective address in the United States, his/her education including trade and vocation training, and lists his/her work experience.

The Form ETA 750 Part B prepared by the beneficiary states the following education history:

Block 11

Names and Addresses of Schools, Colleges, and Universities Attended (including trade or vocational training facilities)

<u>Nanjing Institute of Posts & Teleco, Nanjing, China</u>	
Field of Study	<u>Business Management</u>
From ...[mo./yr]	<u>08/1993</u>
To ...[mo./yr.]	<u>07/1995</u>
Degrees or Certificates Received	<u>Certificate</u>
<u>China Coresp. College of Computer, Shenzhen, China</u>	
Field of Study	<u>Computer Technology</u>
From ...[mo./yr]	<u>03/91</u>
To ...[mo./yr.]	<u>02/93</u>
Degrees or Certificates Received	<u>Certificate</u>

On the labor certification, the beneficiary stated work experience from March 1991 to August 1999 as a Computer Sales/Support Specialist in P.R. China before coming to work for the petitioner as a computer support specialist in April 2001.

As discussed above, the role of the DOL in the employment-based immigration process is to make two determinations: (i) that there are not sufficient U.S. workers who are able, willing, qualified and available to do the job in question at the time of application for labor certification and in the place where the alien is to perform the job, and (ii) that the employment of such alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. Section 212(a)(5)(A)(i) of the Act. Beyond this, Congress did not intend DOL to have primary authority to make any other determinations in the immigrant petition process. *Madany*, 696 F.2d at 1013. As discussed above, CIS, not DOL, has final authority with regard to determining an alien's qualifications for an immigrant preference status. *K.R.K Irvine*, 699 F.2d at 1009 FN5

(citing *Madany*, 696 F.2d at 1011-13). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by DOL.

Specifically, as quoted above, the regulation at 20 C.F.R. § 656.21(b)(6) requires the employer to "clearly document that all U.S. workers who applied for the position were rejected for lawful job related reasons." The Board of Alien Labor Certification Appeals (BALCA) has held that an employer cannot simply reject a U.S. worker that meets the minimum requirements specified on the Form ETA-750. See *American Café*, 1990 INA 26 (BALCA 1991), *Fritz Garage*, 1988 INA 98 (BALCA 1988), and *Vanguard Jewelry Corp.* 1988 INA 273 (BALCA 1988).

Significantly, in the labor certification process, when DOL raises the issue of the alien's qualifications, it is to question whether the Form ETA-750 properly represents the job qualifications for the position offered. DOL is not reaching a decision as to whether the alien is qualified for the job specified on the Form ETA 750, a determination reserved to CIS for the reasons discussed above. Thus, DOL's certification of an application for labor certification does not bind us in determinations of whether the alien is qualified for the job specified.

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, CIS must examine "the language of the labor certification job requirements" in order to determine what the petition beneficiary must demonstrate to be found qualified for the position. *Madany*, 696 F.2d at 1015.

The manner by which CIS interprets the meaning of terms used to describe the requirements of a job in a labor certification is to "... examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). CIS's review of the job's requirements, as stated on the labor certification must involve "... reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). CIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued.

Concerning the beneficiary's eligibility for a preference visa under the classification of professional, the regulation at 8 C.F.R. § 204.5(l)(2) states, in pertinent part:

"*Professional* means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions."

Therefore, the beneficiary must meet the requirements of the labor certification. Specifically, the beneficiary has not demonstrated the completion of four years of college or that she possesses a "foreign equivalent degree" that is the equivalent to a U.S. baccalaureate degree.⁴ A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). The labor certification requires four years of college education. As stated in the labor certification, the beneficiary does not have a four year college degree. The beneficiary has a total of three years and ten months of education attained at two separate schools.

⁴ Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." Under Section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

The petitioner had introduced credentials evaluation by the Foundation for International Services, Inc. dated April 24, 2000. The evaluator stated the beneficiary attained a graduation certificate from the Nanjing Institute of Posts & Telecommunications, Nanjing, P.R. China, certifying that the beneficiary studied "business Management in the Department of Management Engineering from August of 1993 to July of 1995." According to the certificate, the beneficiary studied "Business Management of Posts & Telecommunications" from August 1993 to July 1995, and, she had attained a graduation certificate evidencing her satisfactory studies.

No transcript or mark sheet stating the courses taken and satisfaction of the course requirements was submitted. According to paragraph number one of the evaluation dated April 24, 2000, a "copy of the student test record" listing the subjects examined including the score for each was submitted to the evaluator. Although according to the evaluation statement the material was reviewed by the evaluator, the same material is not present in the record of proceeding. In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The Foundation for International Services, Inc. evaluator continued in her opinion to state that the beneficiary has employment experience as a computer sales engineer.⁵ After stating that the beneficiary has seven years of employment experience, the evaluator stated that that the beneficiary has the equivalence based upon "her educational background" and "employment experiences" of a bachelor's degree in business with a specialization in computer technology from an accredited college or university in the United States. She reached this conclusion utilizing the ratio of three years of experience equals one year of university credit. The evaluation in the record equated each three years of employment experience to one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. See 8 CFR § 214.2(h)(4)(iii)(D)(5). Therefore, for this and the other reasons discussed above, this evaluation has slight probative value in this matter.

Counsel has submitted a letter from [REDACTED], Ph.D. dated September 15, 2000, opining upon the beneficiary's educational and professional work experience. According to the letter written upon the stationery of Seattle Pacific University, Seattle, Washington, the combination of the beneficiary's education attained at the China Correspondence College of Computer, and, the Nanjing Institute of Posts & Telecommunications, satisfies the U.S. bachelor's degree requirements of 1.5 years of studies. Mr. [REDACTED] then concludes that the beneficiary's seven years of employment experience, based upon the ratio of three years of experience equals one year of university credit, satisfies the remaining bachelor's degree educational requirement. The evaluator concludes that the beneficiary's combined "education and work" experience equates to a "U.S. Bachelor's degree in Business with specialization in Information Systems Management." As already stated, that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions.

CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Neither of the above two evaluations, for the reasons stated, is probative expert opinion evidence that the beneficiary had Bachelor of Degree in Business or Computer as required by the labor certification.

⁵ There is no evidence in the record of proceeding that the beneficiary ever was employed as a "computer sales engineer."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Therefore a graduation certificate from the China Correspondence College of Computer dated March 1993, and, a graduation certificate from the Nanjing Institute of Posts & Telecommunications (culminated in July 1995) do not satisfy the regulation or the requirement of the labor certification. Although the regulation at 8 C.F.R. § 204.5(k)(2), permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an *advanced degree*, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a *U.S. baccalaureate degree*. We do not find the determination of the credential evaluations probative in this matter. As already noted, a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977).⁶

We find that the beneficiary does not have a Bachelor's Degree in Business or Computer or its foreign degree equivalent, as stated on the labor certification. Therefore, the petitioner has not demonstrated the beneficiary's eligibility as a professional.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

⁶ In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245.