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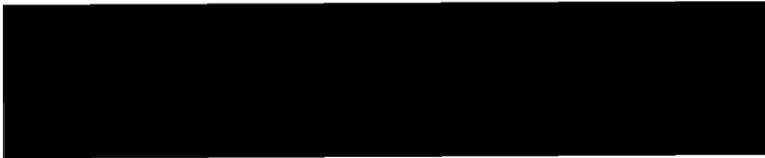
U.S. Department of Homeland Security
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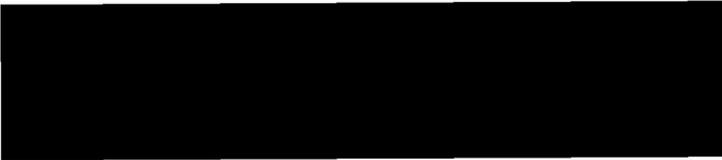
Petitioner:



Beneficiary:

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 preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an accounting firm. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position because he did not have a four-year bachelor's degree and because the record of proceeding did not reflect a sufficient verification of his qualifying employment experience. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's November 8, 2004 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position. The director determined that the petitioner could not combine the beneficiary's completion of a two-year baccalaureate program from the University of Karachi with completion of an accountancy examination from Pakistan's licensing institute to show equivalency to a four-year bachelor's degree. The director also determined that the employment experience letter failed to state the number of hours that the beneficiary worked at his prior place of employment thereby failing to verify full-time qualifying employment experience for one year.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. While no degree is required for this classification, the regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification must be accompanied by evidence that the beneficiary "meets the education, training or experience, *and any other requirements of the individual labor certification.*" (Emphasis added.)

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of 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)(3)(ii)(C) states the following:

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. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory

provision. And for the “professional category,” the beneficiary must also show evidence of a “United States baccalaureate degree or a foreign equivalent degree.” Thus, regardless of category sought, the beneficiary must have a bachelor’s degree or its foreign equivalent.

For the reasons discussed below, we find that decisions by federal circuit courts, which are binding on this office, have upheld our authority to evaluate whether the beneficiary is qualified for the job offered. Further, those decisions, in conjunction with decisions by the Board of Alien Labor Certification Appeals (BALCA), support our interpretation of a foreign equivalent degree to a United States baccalaureate degree.

Contrary to counsel’s assertions, whether the beneficiary qualifies as a skilled worker as defined in the regulation quoted above is not the issue before us. The issue is whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification. The regulations specifically require the submission of such evidence for this classification. *See* 8 C.F.R. § 204.5(l)(3)(B). As noted above, the Form ETA 750 in this matter is certified by DOL. Thus, at the outset, it is useful to discuss DOL’s role in this process. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

According to 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) 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 on whether or not:

- (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 inquiries assigned to DOL involve a determination as to whether or not the alien is qualified for the job offered. This fact has not gone unnoticed by Federal Circuit Courts, including the 9th Circuit that covers the jurisdiction for this matter.

There is no doubt that the authority to make preference classification decisions rests with [Citizenship and Immigration Services (CIS)]. 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 [CIS'] 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.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on this decision, the Ninth circuit stated:

[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 [CIS] under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to [CIS'] decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the 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, reached a similar decision in *Black Const. Corp. v. INS*, 746 F.2d 503, 504 (1984).

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). [CIS] 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).

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

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

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, CV 04-1849-PK (D. Ore. November 3, 2005), which finds that CIS "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. In this matter, at least two circuits, including the Ninth Circuit overseeing the Oregon District Court, has held that CIS does have the authority and expertise to evaluate whether the alien is qualified for the job. Those Circuit decisions are binding on this office and will be followed in this matter.

The key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also

be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

The petitioner must 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 DOL 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 February 13, 2001.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal¹. On appeal, counsel submits minutes from a meeting between CIS and the American Immigration Lawyers Association (AILA), an excerpt from the National Association of Credential Evaluation Services (NACES), correspondence from Global Services Associates, Inc. (GSA) and Education Evaluators International, Inc. (EEI), copies of the beneficiary's license from the State of California's California Board of Accounting issued in March 2004, and excerpts from the California Board of Accountancy's licensing program.

Including the evidence submitted on appeal, other relevant evidence in the record includes credential evaluations from GSA and EEI, a summary of the beneficiary's educational achievements, a letter from Colorado's CPA Examination Services reflecting the beneficiary's passage of the Uniform CPA Examination in July 2001, a copy of a certificate issued by The Institute of Chartered Accountants of Pakistan to the beneficiary as an Associate in July 1997, copies of examination certificates issued by The Institute of Chartered Accountants of Pakistan to the beneficiary in October 1997 and May 1996, examination certificate issued by the Institute of Cost and Management Accountants of Pakistan issued to the beneficiary in February 1997, a Bachelor of Commerce diploma issued by the University of Karachi to the beneficiary in November 1993, transcripts from the University of Karachi reflecting the beneficiary's completion of a two-year baccalaureate program in commerce in 1991 and 1992, a higher secondary certificate issued to the beneficiary in May 1989, transcripts reflecting completion of examinations for intermediate education in 1987 and 1988, and a letter from The Institute of Chartered Accountants of Pakistan detailing the beneficiary's completion of examinations. The record does not contain any other evidence relevant to the beneficiary's qualifications.

On appeal, counsel asserts that the petitioner did not require four years for the bachelor degree requirement on the Form ETA 750A, that the beneficiary has the equivalent of a bachelor's degree through the combination of his two-year degree from the University of Karachi and his completion of two examinations from the Institute of Chartered Accountants in Pakistan, that the beneficiary's degree equivalency is supported by credential evaluators who are members of NACES, that the beneficiary's eligibility to sit for state accountancy licensing examinations were based on their evaluation of the beneficiary's bachelor degree equivalency, that Efrén Hernandez confirms that a combination of educational degrees can be equivalent to one required degree, that the case should be considered under the "skilled worker" category instead of the "professional category," and that the holding in *Grace Korean* applies and post secondary education should be considered as "training" to establish the beneficiary's eligibility as a skilled worker.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

As noted above, to determine whether a beneficiary is eligible for an employment based immigrant visa, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *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, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of accountant. In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | | |
|-----|-------------------------|--|
| 14. | Education | |
| | Grade School | 9 |
| | High School | 3 |
| | College | Blank |
| | College Degree Required | Bachelor's |
| | Major Field of Study | Bus. Admin. , Accounting or related |

The applicant must also have one year of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A specially requires applicants' prior experience in cash flow and budgetary projections, financial statement preparation and analysis, inventory control analysis, and internal control procedures. The AAO notes that the Form ETA 750A does not specify any equivalency for the degree requirement.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, eliciting information about schools, colleges and universities attended, including trade or vocational training, the beneficiary represented that he attended the University of Karachi in Karachi, Pakistan from August 1990 through July 1992 and was awarded a bachelor's degree in commerce. Subsequently, the beneficiary attended the Institute of Chartered Accountants in Karachi, Pakistan from May 1993 through July 1996 culminating in a final exam certificate in accounting.

Counsel relies upon opinions expressed by Efrén Hernández III of the INS Office of Adjudications about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2). Within the context of letters issued by Mr. Hernández, he states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree. At the outset, it is noted that private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); see also, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, 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. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in Mr. Hernández' correspondence,

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 under the third preference category.

In the instant case, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree with a major in business administration, accounting or a related area.

Although the petitioner did not delineate four years as the required number of years required for the bachelor's degree requirement on the Form ETA 750A, it is noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). 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.

Guiding the actual credentials held by the beneficiary are credential evaluations submitted into the record of proceeding for this case. It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides: "[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."

The AAO recognizes members of NACES, the National Association of Credential Evaluation Services (NACES) as reputable credential evaluation services since the U.S. Department of Education refers individuals seeking verification of the equivalency of their foreign degrees to American degrees through private credential evaluation services to NACES. The objective of NACES is to raise ethical standards in the types of credential evaluations provided by the private sector. Both GSA and EEI are members of NACES. Thus, the credential evaluations provided by GSA and EEI will be given appropriate evidentiary weight in these proceedings.

The credential evaluation from GSA stated the following, in pertinent part:

[The beneficiary] completed studies from 1990 to 1992 at the University of Karachi . . . earning the two-year degree of Bachelor of Commerce in November 1993. In addition, [the beneficiary] completed studies in accounting from 1993 to 1996 in Pakistan, validated by passing the Intermediate Examination in October 1994 and the Final Examination in May 1996 of the Institute of Chartered Accountants of Pakistan (ICAP). . .

These studies *together* are equivalent to a Bachelor of Science in Business Administration with a specialization in Accounting awarded by regionally accredited *colleges and universities* in the United States.

(Emphasis added).

A letter from GSA submitted on appeal stated the following, in pertinent part:

[The beneficiary] completed twelve years of pre-university studies in Pakistan before earning the two-year degree of Bachelor of Commerce from the University of Karachi in November 1993. He then completed advanced studies in accounting which were validated by passing the Intermediate and Final Examinations of the Institute of Chartered Accountants of Pakistan (ICAP)...

We consider these studies *together* equivalent to a Bachelor's degree for licensing, employment and further study at the graduate level in the United States based on placement recommendations developed by the National Council on the Evaluation of Foreign Education Credentials, which was established jointly by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) and NAFSA: Association of International Educators. Generally professional memberships in national accounting organizations, based on an examination scheme, are considered by the Council as equivalent to completion of similar advanced studies at universities in the United Kingdom and former Commonwealth countries, such as India and Pakistan, leading to graduate admission in the home country. We at GSA concur with the recommendations and graduate placement in the home country, and that such studies are equivalent in level and purpose to a Bachelor's degree in the United States.

(Emphasis added).

The credential evaluation from EEI stated the following, in pertinent part:

[The beneficiary] completed the two year full time program [at University of Karachi] and earned the Bachelor of Commerce.

Additional studies were completed by [the beneficiary] (1996) at the Institute of Chartered Accountants of Pakistan located in Karachi, Pakistan. [The beneficiary] completed and passed all the required examinations for the Final Examination, set at bachelor's degree level, and earned the Final Examination Certificate. After the completion of the required professional practice, he earned the title of Associate of the Institute (1997).

These *combined* studies are equivalent in level and purpose to a Bachelor of Science in Accounting awarded by regionally accredited *colleges and universities* in the United States.

(Emphasis added).

Additional clarifying correspondence from EEI submitted on appeal stated the following, in pertinent part:

In countries with British patterned education such as England, Scotland, Wales, Ireland, Hong Kong, South Africa, Australia, India, Pakistan and Sri Lanka, accounting is often taught through external professional bodies that are outside the university setting. However, coursework and examinations are set at the bachelor's degree level.

The Institute of Chartered Accountants of Pakistan was established in 1961 and awards Associate Membership to those who have earned a university Bachelor of Commerce degree,

passed all the required examinations of the Institute's Final Examination (entailing all levels of accounting including Advanced Accounting) and completed at least three years of professional experience in an approved Chartered Accountants position. The recognition of this qualification is through reciprocity by Institutes of Chartered Accountants in other countries as well as Pakistan universities. This reciprocity offers acceptance as the equivalent of a university Bachelor's degree for professional standing and/or for eligibility to Master's level degree programs.

Both EEI and GSA concur that the beneficiary has the equivalent of a bachelor's degree awarded by an accredited college or university in the United States through the combination of the completion of the two-year program at the University of Karachi and his completion of examinations through the Institute of Chartered Accountants of Pakistan (ICAP)². Neither states that only *one* of those degrees *alone* establishes equivalency to completion of a baccalaureate degree program at an accredited university in the United States.

The regulations define a third preference category "professional" as 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." See 8 C.F.R. § 204.5(l)(2). The regulation uses a *singular* description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes. Therefore, the combination of degrees does not qualify the beneficiary for the proffered position as the position's requirements are delineated on the Form ETA 750A.

Counsel also asserts that the GSA credential evaluation was submitted to the California Board of Accountancy licensing board and that the beneficiary's eligibility to sit for state licensing examinations in accounting evidences that his academic credentials are the foreign equivalent of a baccalaureate degree. At the outset, the **proffered position does not require a state license. The AAO did review both Colorado and California's eligibility requirements for admission to sit for licensing examinations. Colorado requires a bachelor's degree. California requires a bachelor's degree, or a combination of semester hour completions with work experience. The AAO also reviewed the Department of Labor's (DOL) *Occupational Outlook Handbook* (OOH) pertaining to accountants and noted the low passage rate for the Uniform CPA Examination that the beneficiary passed upon obtaining his Colorado license and that "most" accountant positions require a bachelor's degree in accounting but some permit an equivalent combination of education and experience. See page 22 (2002-2003 edition). Regardless of state licensing board requirements for accountants and the beneficiary's performance on those state board examinations, however, counsel's argument is akin to arguing that aliens who are deemed to have the foreign equivalent of a bachelor's degree through the combination of their educational achievements**

² It is noted that ICAP's website reflects that it permits graduates of secondary school with passage of two "A levels" to enroll and take its examinations and with successful passage of those examinations become a member of the professional association. See <http://www.icap.org.pk/Education/MFC.htm> (accessed May 18, 2006). Thus, enrollment in ICAP's program does not require completion of a four year baccalaureate degree program nor does it substitute for it. ICAP also accepts, but does not require status as, graduates and post-graduates from universities. It is further noted that contrary to the credential evaluations' assertions, associate level membership in ICAP does not require a bachelor's degree but completion of training and examinations and other non-dispositive requirements, and as noted earlier, enrollment to take the examinations and receive training may be accomplished with lesser credentials than a bachelor's degree. See <http://www.icap.org.pk/Members/REQ.htm> (accessed May 18, 2006).

and employment experience under the H-1B nonimmigrant regulations³ are similarly qualified for the third preference category. Similar to the lack of H-1B nonimmigrant analogousness to the third preference category, state licensing standards for evaluating foreign credentials are not the same as federal standards applied by CIS and which preempt state laws and standards promulgated by state professional regulatory boards. As stated previously, CIS is bound by the requirements of the Form ETA 750, not by state licensing requirements.

Finally, counsel suggests that if the beneficiary is not qualified under the professional section of the third preference category, then CIS should consider the beneficiary's qualifications under the skilled worker section of the third preference category and cites to *Grace Korean*. Once again, we are cognizant of the recent holding in *Grace Korean* which held that CIS is bound by the employer's definition of "bachelor or equivalent." In reaching this decision, the court concluded that the employer in that case tailored the job requirements to the employee and that DOL would have considered the beneficiary's credentials in evaluating the job requirements listed on the labor certification. As stated above, the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, but the analysis does not have to be followed as a matter of law. K.S. 20 I&N Dec. at 719. *Grace Korean* is distinguishable from the instant matter because the petitioner did not set forth the requirement of "bachelor or equivalent" on the Form ETA 750A but just "Bachelor's." Thus, unlike in *Grace Korean* where the petitioner asserted that by inserting "or equivalent" into the Form ETA 750A, it meant to accept a combination of education and experience, the petitioner in the instant petition made no such entry and therefore the plain reading of the Form ETA 750 is that it requires a bachelor's degree or an equivalent foreign degree.

Moreover, even if the facts were comparable to the instant case, however, the court's reasoning would not be followed because it is inconsistent with the actual practice at DOL. 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. *Id.*

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." 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). Thus, the court's suggestion in *Grace Korean* that the employer tailored the job requirements to the alien instead of the job offered implies unlawful conduct on the part of the employer. If, in fact, DOL is looking at whether the job requirements are unduly restrictive and whether U.S. applicants met the job requirements on the Form ETA 750, instead of whether the alien meets them, it becomes immediately relevant whether DOL considers "B.A. or equivalent" to

³ See 8 CFR § 214.2(h)(4)(iii)(D)(5).

require a U.S. bachelor degree or a foreign degree that is equivalent to a U.S. bachelor's degree. We are satisfied that DOL's interpretation matches our own. In reaching this conclusion, we rely on *Hong Video Technology*, 1998 INA 202 (BALCA 2001). That case involved a labor certification that required a "B.S. or equivalent." The Certifying Officer questioned this requirement as the correct minimum for the job as the alien did not possess a bachelor of science degree. In rebuttal, the employer's attorney asserted that the beneficiary had the equivalent of a bachelor of science degree as demonstrated through a combination of work experience and formal education. The Certifying Officer concluded that "a combination of education and experience to meet educational requirements is unacceptable as it is unfavorable to U.S. workers." BALCA concluded:

We have held in *Francis Kellogg, et als.*, 94-INA-465, 94 INA-544, 95-INA-68 (Feb. 2, 1998 (en banc) that where, as here, the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chose to list alternative job requirements, the employer's alternative requirements are unlawfully tailored to the alien's qualifications, in violation of [20 C.F.R.] § 656.21(b)(5), unless the employer has indicated that applicants with any suitable combination of education training or experience are acceptable. Therefore, the employer's alternative requirements are unlawfully tailored to the alien's qualifications, in violation of [20 C.F.R.] § 65[6].21(b)(5).

In as much as Employer's stated minimum requirement was a "B.S. or equivalent" degree in Electronic Technology or Education Technology and the Alien did not meet that requirement, labor certification was properly denied.

Significantly, 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. As quoted above, DOL has conceded as much in an amicus brief filed with a federal court. If we were to accept the employer's definition of "or equivalent," instead of the definition DOL uses, we would allow the employer to "unlawfully" tailor the job requirements to the alien's credentials before CIS after DOL has already made a determination on this issue based on its own definitions. **We would also undermine the labor certification process. Specifically, the employer could have lawfully excluded a U.S. applicant that possesses experience and education "equivalent" to a degree at the recruitment stage as represented to DOL.** We note again that this is beside the point because in this case there is no "or equivalent" notation to the degree requirement as it is delineated on the Form ETA 750A.

Finally, where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, 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 only rational manner by which CIS can be expected to interpret 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 interpretation 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 or otherwise attempt to divine the employer's intentions through some sort of reverse-engineering of the labor certification.

While we do not lightly reject the reasoning of a District Court, it remains that the District Court's decision is not binding on us and runs counter to Circuit Court decisions that are binding on us and is inconsistent with the actual labor certification process before DOL. Thus, in cases where petitioners set forth the requirement of a "bachelor's degree" on the Form ETA 750A, we will maintain our consistent policy in this area by accepting only a foreign equivalent degree. We note that this interpretation is consistent with our own regulations, which define a degree as a degree or a foreign equivalent degree. *See* 8 C.F.R. § 204.5(1)(2).

Regardless of the category the petition was submitted under, however, the petitioner must not only prove statutory and regulatory eligibility under the category sought, but must *also* prove that the sponsored beneficiary meets the requirements of the proffered position as set forth on the labor certification application.

Both regulatory provisions governing the two third preference visa categories clearly require that the petitioner submit evidence of the beneficiary's bachelor's degree or foreign equivalent – for a "professional" because the regulation requires it and for a "skilled worker" because the regulation requires that the beneficiary qualify according to the terms of the labor certification application in addition to proving a minimum of two years of employment experience. Thus, counsel's argument that the beneficiary may be qualified as a skilled worker because of relevant post secondary education substituting for training is misplaced.

As stated in 8 C.F.R. § 204.5(1)(3)(ii)(B), to qualify as a "skilled worker," the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree. The petitioner simply cannot qualify the beneficiary as a skilled worker without proving that the beneficiary meets its additional requirement on the Form ETA-750 of an equivalent foreign degree to a U.S. bachelor's degree.

If supported by a credential evaluation stating that the beneficiary's degree in and of itself was equivalent to a bachelor's degree, a **four-year** baccalaureate degree from Pakistan could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, the record reflects that the beneficiary's formal education consists of less than a four-year curriculum. Additionally, the petitioner has not indicated that a combination of educational achievements and professional memberships can be accepted as meeting the minimum educational requirements stated on the labor certification⁴. Thus, the combination of educational achievements and professional memberships may not be accepted in lieu of one baccalaureate degree. The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed. Thus, the

⁴ For example, the educational requirements were not listed with a foreign equivalency designation or some clarification that the petitioner would be willing to accept a combination of a two-year degree, experience, completion of an examination through an institute governing professionals, and/or a license. The AAO is loath to presume the outcome of the recruitment results before DOL had applicants been aware that some lesser form of educational requirements could have established their qualification and eligibility for the proffered position, such as their completion of lesser amounts of semester hours than a four-year baccalaureate program and licensure, which is authorized by the California State Board of Accountancy. DOL's OOH also states that accountants can obtain entry-level positions without a bachelor's degree or even a license. *See* page 22 (2002-2003 edition). The proffered position did not require a state license. The transcribed AILA notes relied upon by counsel also notes that practitioners have been advised to carefully draft degree requirements on the Form ETA 750A since a combination of education is not the equivalent of a U.S. bachelor's degree. *See* page 4 of 9.

portion of the director's decision concerning the beneficiary's qualifications based on the bachelor's degree requirement is affirmed.

With respect to the experience letter, on appeal counsel submits a letter from A.F. Ferguson & Co. dated November 25, 2004 referring to their April 1999 certificate and stating that they employed the beneficiary for 39.5 hours per week from May 16, 1997 to February 15, 1999. On the Form ETA 750B, the beneficiary represented that he worked for A.F. Ferguson & Co. from May 1997 through February 1999. Since the proffered position requires one year of experience, it is noted that the description of the duties of the position as delineated on Form ETA 750A, Item 13 include preparation of financial statements, financial statement analysis, maintenance of financial records as accounts payable, accounts receivable, and fixed assets and liabilities, cash flow and budgetary projections, inventory control analysis, internal control procedure performance, and application of various accounting software programs and spreadsheets.

The record of proceeding contains letters and certificates from A.F. Ferguson & Co.'s dated April 1999 and May 1997. The May 1997 certificate certified the beneficiary's completion of four years as a trainee student from May 3, 1997 to May 2, 1997, signed by a partner and on A.F. Ferguson & Co. letterhead. Another May 1997 certificate detailed the beneficiary's training from May 3, 1997 to May 2, 1997 as a junior trainee student, semi senior trainee student, senior trainee student, and supervising senior trainee student, signed by a partner and on A.F. Ferguson & Co. letterhead. The April 1999 certificate states that the beneficiary was an assistant manager from May 16, 1997 through February 15, 1999, is signed by a partner, on A.F. Ferguson & Co. letterhead, and provided an annexed description of duties performed by the beneficiary. The record of proceeding does not contain any other relevant evidence pertaining to the beneficiary's employment experience.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation—*

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The letter submitted on appeal cures the defect about the number of hours the beneficiary worked for A.F. Ferguson & Co. A description of the training the beneficiary received at A.F. Ferguson & Co. was provided and demonstrates that the beneficiary was involved in the preparation of financial statements, financial statement analysis, maintenance of financial records as accounts payable, accounts receivable, and fixed assets and liabilities, cash flow and budgetary projections, inventory control analysis, internal control procedure performance, and application of various accounting software programs and spreadsheets, the duties required by

the proffered position. The letters are signed by trainers or employers, with contact information. Thus, the evidence now conforms to the regulatory requirements of 8 C.F.R. § 204.5(l)(3) and demonstrates that the beneficiary completed one year of qualifying employment experience prior to the priority date and meets the employment experience requirements of the proffered position. Thus, the portion of the director's decision concerning the beneficiary's qualifications derived from employment experience is withdrawn.

ORDER: The appeal is dismissed.