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

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[redacted]

FILE: LIN 05 069 50257 Office: NEBRASKA SERVICE CENTER Date: OCT 11 2006

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

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

The petitioner is an information management consulting business. It seeks to employ the beneficiary permanently in the United States as a systems analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, accompanies the petition. The director determined that the petitioner had not established that the beneficiary met the requirements of the labor certification as of the priority date, October 6, 1999.

The record shows that the appeal is properly filed, 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 this decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's March 29, 2005 denial, the single issue in this case is whether or not the beneficiary meets the requirements of the labor certification as of the priority date.

Section 203(b)(3)(A)(i) of 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 or seasonal nature, for which qualified workers are not available in the United States.

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 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) states, in pertinent part:

> (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.
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> (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 occupational designation. The minimum requirements for this classification are at least two years of training or experience.
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> (C) *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. To show that the alien is a member of the professions, the

> petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

On appeal, counsel asserts:

> A letter from Efren Hernandez III, Director of Business & Trade Services, USCIS, to Attorney Aron Finkelstein on January 7, 2000 stating USCIS Headquarters' position that **"it is not the intent of the regulations {specifying the definition of "a foreign equivalent degree" in 8 C.F.R. § 204.5(k)(2)} that only a single foreign degree may satisfy the equivalency requirement."** He does specify that in the context of education that experience and education may not be combined to satisfy the degree requirement. Note that experience is not being used here as the equivalence is met with academic degrees.

Federal Circuit Court precedent cases[1] (discussed later in greater detail in this decision), which are binding on this office, have repeatedly upheld our authority to make a de novo determination of whether the beneficiary is in fact qualified to fill the certified job offer. The issuance of a labor certification does not, therefore, bind U.S. Citizenship & Immigration Services ("CIS") to accept the employer's, or even the Department of Labor's definition of the amount and kind of experience that should be considered the equivalent of a college degree. In any event, the same Federal Circuit precedent cases, in conjunction with the reasoning set forth in relevant decisions by the Board of Alien Labor Certification Appeals (BALCA), support our interpretation of the phrase "B.S. or foreign equivalent" as requiring either (i) a U.S. baccalaureate degree or (ii) a foreign equivalent degree, where such foreign equivalent degree is not a combination of lesser degrees and experience.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's (DOL'S) employment service system. *Matter of Wing's Tea House,* 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is October 6, 1999.

As noted above, the 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) 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.

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[1] *See Castaneda-Gonzalez v. INS,* 564 F.2d 417, 429 (D.C. Cir. 1977), *Madany v. Smith,* 696 F.2d. 1008, 1012-1013 (D.C. Cir. 1983), and *K.K.K. Irvine, Inc. v. Landon,* 699 F.2d 1006, 1008 (9th Cir. 1983).

According to the regulation at 20 C.F.R. § 656.20(c), as in effect at the time of filing,[2] 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;
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> (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 ETA 750 to include:

> (1) A statement of the qualifications of the alien, signed by the alien; [and]
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> (2) A description of the job offer for the alien employment, including the items required by paragraph (b) of this section.

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[2] Recently the Department of Labor has promulgated new regulations regarding the labor certification process. These new regulations only apply to applications filed on or after the effective date of the regulations, March 28, 2005. Applications filed before March 28, 2005, such as the one before us, are to be processed and governed by the regulations quoted in this decision. 69 Fed. Reg. 77326-01 (Dec. 27, 2004).

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.
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> (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:
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>> (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.
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>> (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.
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>> (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.
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>> (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.
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> (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 the Federal Circuit Courts of Appeals:

> 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) [currently found at 212(a)(5)(A)(i)]. 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.
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> * * *
>
> 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 Court of Appeals 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 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.

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.*

Id. at 1009 (emphasis added). The Ninth Circuit reached a similar decision one year later in *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*:

> 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.

736 F. 2d 1305, 1309 (9th Cir. 1984). *See also* Black Const. Corp. v. I.N.S., 746 F.2d 503 (9th Cir. (Guam) 1984) (rejecting argument that once employer's labor certifications had been approved by DOL it was error for INS to deny related immigrant petitions for failure to meet preference status requirements).

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), in which the District Court found 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 of Appeals, 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 federal 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, particularly, as in *Grace Korean*, where the case is unpublished. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church* at *8 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since CIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a). Moreover, at least two circuits, including the Ninth Circuit overseeing the Oregon District Court, have held that CIS does indeed have the authority and expertise to evaluate whether the alien is qualified for the job. Those Circuit decisions, and not *Grace Korean*, are binding on this office and will be followed in this matter.

The key to determining the job qualifications specified in the labor certification 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.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification, as filled in by the petitioner, reflects the following requirements:

Block 14:

Education:	Four years of college; College degree required: "Bachelors."
Major Field of Study:	Computer Science/Engineering or Foreign Equivalent
Experience:	Two years in the job offered or two years in the related occupation of programmer.

Block 15 ("Other Special Requirements") includes Sun Solaris, Unix Shell Scripting, Windows NT 3.51 & 4.0 (Server & Workstation), Novell NetWare 3.12 & 4.0, Windows 95, Oracle 6.x, 7.x, Wingate (Firewall), and MS Office. 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. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. 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).

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 court'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. In this matter, the court's reasoning cannot be followed because, as will become clear below, 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.*

Additionally, 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.

CIS's authority, derived from the Act, regulations, and Circuit Court of Appeals precedent, to make a de novo determination of whether the alien is in fact qualified to fill the certified job offer, in combination with the judicial injunction to CIS to interpret the labor certification according to its exact and plain language, compels the conclusion, which we accept, that the issuance of a labor certification does not bind CIS to accept the employer's, or even the Department of Labor's definition of the amount and kind of experience that should be considered the equivalent of a college degree.

In any event, however, we are satisfied that DOL's interpretation of "B.A. or equivalent" matches our own. 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 who 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 actually implies that the recruitment was unlawful. 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 require a U.S. bachelor's degree or a foreign degree that is equivalent to a U.S. bachelor's degree.

In reaching the conclusion that DOL's interpretation of "B.A. or equivalent" matches our own, we rely on the reasoning articulated in *Hong Video Technology*, 1998 INA 202, 2001 WL 1055170 (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 chosen 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.

Hong Video Technology, 2001 WL 1055170, at 4.

Significantly, when DOL raises the issue of the alien's qualifications in Hong Video, 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 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.

While we do not lightly reject the reasoning of a District Court, it remains that the District Court's unpublished decision is not binding on us, runs counter to Circuit Court decisions that are binding on us, and is inconsistent with the actual labor certification process before DOL. Thus, we will maintain our consistent policy in this area of interpreting "or equivalent" as meaning 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. 8 C.F.R. § 204.5(l)(2).

In order to be eligible for classification as a professional, the beneficiary must have a completed four years of college and possess a baccalaureate degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(2). While the beneficiary need not possess a degree to be classified as a skilled worker, the beneficiary must meet the requirements of the labor certification. 8 C.F.R. § 204.5(l)(3)(B). The beneficiary possesses a foreign three-year bachelor's degree in commerce from the University of Madras and a diploma in systems management from the National Institute of Information Technology in Madras, India (NIIT). The director concluded that the beneficiary did not have the requisite U.S. baccalaureate degree or foreign equivalent degree.

The AAO accessed NIIT's website to determine what type of educational services it provides. NIIT collaborates with India's government educational system from kindergarten through post-graduate levels. No admission requirements are posted on the website but it does reflect that it provides online courses to colleges and develops college graduates' technical skills to prime them for better employment positions. Thus, it appears that NIIT does not require a college degree in order to admit a student. There is no evidence that the beneficiary's admission to NIIT was predicated upon the completion of a bachelor's degree program.

Counsel has submitted two evaluations that all conclude that the beneficiary's degree and NIIT diploma are equivalent to a U.S. baccalaureate degree.

First, a three-year bachelor's degree will not be considered to be a "foreign equivalent degree" to a United States baccalaureate degree. Nor will three years of education satisfy the four-year requirement set forth on the ETA-750. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). If supported by a proper credentials evaluation, a four-year baccalaureate degree from India could reasonably satisfy the four-year requirement and also be deemed to be a "foreign equivalent degree" to a United States baccalaureate degree. However, in *Matter of Shah*, 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*, 17 I&N Dec. at 245. Based on the same reasoning, the AAO will not consider the beneficiary's three-year Bachelor of Commerce degree from the University of Madras to meet the four-years of college requirement or to be the required "foreign equivalent degree" to a United States baccalaureate degree for purposes of this preference visa petition.

Regarding the NIIT diploma, CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Neither the statute nor the conforming regulations allow for alternatives to the requirement of the specific degree required on the Form ETA-750, whether the equivalency is based on work experience or a combination of lesser educational degrees and certifications, professional memberships or other training. As noted above, a three-year degree is not considered by U.S. universities to be equivalent to a U.S. baccalaureate for purposes of admission into graduate schools because the three-year degree is subject specific. We fail to see how adding additional subject specific coursework or training resolves that issue. Significantly, the decision in *Matter of Shah*, 17 I&N Dec. at 244-245, found that the alien's degree was not equivalent to a U.S. baccalaureate even though the alien had been admitted into a Master's program in the United States.

Finally, counsel also submits a copy of a letter dated January 7, 2003 from [redacted] of the INS Office of Adjudications to counsel in other cases, expressing his opinion 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 July 2003 letter, [redacted] 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 [redacted] 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 [redacted] 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. We do not find the determination of the credentials evaluation probative in this matter. It is further 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.

Therefore, based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as required by the terms of the labor certification.

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 sustained that burden.

ORDER: The appeal is dismissed.