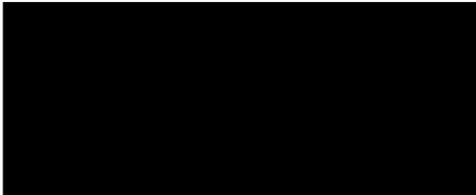


identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



06

FILE: LIN-06-082-50986 Office: NEBRASKA SERVICE CENTER Date: FEB 27 2008

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:
[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 (“director”), denied the employment-based immigrant visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office (“AAO”). The appeal will be dismissed.

The petitioner is an import firm, and seeks to employ the beneficiary permanently in the United States as a market research analyst (“Marketing Manager”). As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (“DOL”). 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 did not possess a four-year bachelor’s degree as listed on Form ETA 750.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).¹

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 the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner has filed to obtain permanent residence and classify the beneficiary as a professional worker. The regulation at 8 C.F.R. § 204.5(l)(2), and Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (“the Act”), 8 U.S.C. § 1153(b)(3)(A)(ii), provides that a third preference category professional is 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.” 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.

The petitioner must establish that its ETA 750 job offer to the beneficiary is a realistic one. A petitioner’s filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later filed based on the approved ETA 750. The priority date is the date that Form ETA 750 Application for Alien Employment Certification was accepted for processing by any office within the employment service system of the Department of Labor. *See* 8 CFR § 204.5(d). Therefore, the petitioner must establish that the job offer was realistic as of the priority date, and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner’s ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2).

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

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).

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

Here, the Form ETA 750 was accepted for processing by the relevant office within the DOL employment system on April 24, 2001. The proffered wage as stated on the Form ETA 750 is \$32,000 per year based on a 40 hour work week. The Form ETA 750 was certified on September 30, 2005, and the petitioner filed the I-140 petition on the beneficiary's behalf on January 23, 2006. The petitioner listed the following information on the I-140 Petition: date established: 1989; gross annual income: not listed; net annual income: not listed; and current number of employees: 8.

On February 16, 2006, the director issued a Request for Evidence ("RFE") for the petitioner to provide: evidence of its ability to pay the proffered wage from April 2001 onward in the form of the petitioner's federal tax returns for 2001, 2002, 2003 and 2004,² along with 2005 Quarterly Tax Reports, or audited financial statements; and to provide the beneficiary's W-2 statements. The RFE additionally requested that the petitioner provide an evaluation of the beneficiary's education to include only the beneficiary's formal education, and not practical training, that the evaluation should provide whether the beneficiary completed the equivalent of U.S. high school before entering college, to provide a detailed statement of the material evaluated, and to provide the qualifications of the evaluator. Further, the RFE requested that the petitioner submit evidence that the beneficiary obtained the required Bachelor's degree in Economics before the priority date, such evidence to include an official record showing the dates of attendance, concentration of study, and the date of the degree award, if any. The RFE also requested that the petitioner provide evidence that the beneficiary had the one year of required experience for the position offered. The petitioner responded.

On May 17, 2006, the director denied the petition on the basis that the petitioner failed to establish that the beneficiary met the qualifications of the certified labor certification as the petitioner did not establish that the beneficiary had a four-year Bachelor's degree, which was listed as a requirement on the certified labor certification. The petitioner appealed to the AAO.

On October 4, 2007, the AAO director issued an RFE, which requested that the petitioner provide a copy of the recruitment file submitted to DOL in order to determine how the petitioner described the position offered to the public in its labor certification advertisements. The petitioner responded.

On appeal, counsel provides that Citizenship & Immigration Services ("CIS") was in error, as the beneficiary had a bachelor's degree. Further, counsel provided that some countries issue three-year bachelor's degrees, and that many leading schools and universities recognize such degrees.

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.

² The petitioner provided its federal tax returns, which demonstrated either sufficient net income or net current assets to pay the beneficiary's proffered wage.

The proffered position requires a four-year bachelor's degree and one year of experience. Because of those requirements, the proffered position is for a professional, but might additionally be considered as a skilled worker position as well. DOL assigned the occupational code of 050.067-014, "Market Research Analyst," to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/link/summary/15-1032.00> (accessed July 14, 2007) and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." See <http://online.onetcenter.org/link/summary/15-1031.00#JobZone> (accessed December 12, 2006).³ Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

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.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification 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.

The beneficiary possesses a foreign three-year bachelor's degree, and prior work experience. Thus, the issues are whether the beneficiary's three year foreign degree is equivalent to a U.S. baccalaureate degree or, if not, whether it is appropriate to consider the beneficiary's work experience in addition to that degree. We must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

³ DOL previously used the Dictionary of Occupational Titles ("DOT") to determine the skill level required for a position. The DOT was replaced by O*Net. Under the DOT code, the position of Market Research Analyst I had a SVP of 7 allowing for two to four years of experience.

Authority to Evaluate Whether the Alien is Eligible for the Classification Sought

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) 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. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

Under § 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

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

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts.

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).⁴ *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.

* * *

⁴ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. 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). 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." In order to have experience and education equating to a bachelor's 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.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(3) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor's degree.

Authority to Evaluate Whether the Alien is Qualified for the Job Offered

Relying in part on *Madany*, 696 F.2d at 1008, 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 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 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.

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 Citizenship and Immigration Services (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. 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 and not with the delivery of mail. See section 103(a) of the Act, 8 U.S.C. § 1103(a).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, CV 06-65-MO (D. Ore. November 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The district court determined that ‘B.S. or foreign equivalent’ relates solely to the alien’s educational background, precluding consideration of the alien’s combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word ‘equivalent’ in the employer’s educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer’s intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court

determined that Citizenship & Immigration Services (“CIS”) properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner’s intent regarding educational equivalence is clearly stated and does not include alternatives to a bachelor’s degree. Form ETA 750 does not even include the phrase “or equivalent.”

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.

On the Form ETA 750A, the “job offer” position description for a Marketing Manager provides:

Conduct research regarding marketing of goods imported from India. Revise marketing methods according to raw data. Conduct feasibility studies regarding marketing of goods from India in the Midwest. Review economic data of manufacturers in India and of country economic data and consult management accordingly.

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

Further, the job offer listed that the position required:

Education:	Grade School: 8 years; High School: 4 years; College: 4 years; College degree: Bachelors; ⁵
Major Field Study:	Economics.
Experience:	1 year in the job offered, Marketing Manager.

Other special requirements: Prior experience to include marketing of Indian goods in the U.S. and feasibility studies of marketing.

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,

⁵ We note specifically that the petitioner did not include “or equivalent” and further did not list any alternate combinations of education, training, and experience in lieu of a four-year bachelor’s degree.

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 looking at the beneficiary's qualifications, on Form ETA 750B, signed by the beneficiary, the beneficiary listed his prior education as: University of Osmania, India; Field of Study: Economics; from September 1993 to June 1997, for which he received a Bachelor's degree.

The petitioner submitted an evaluation of the beneficiary's education in order to document that the beneficiary met the educational requirements of the labor certification:

Evaluation:

- Evaluation: International Education Evaluations, Inc., Harrisburg, North Carolina.
- The evaluation considered copies of the beneficiary's Bachelor of Arts degree, and marks sheets from Osmania University, dated 1977;⁶
- The evaluation provided that the beneficiary completed a Bachelor of Arts degree from the Osmania University in India. The beneficiary would have completed the equivalent of a U.S. high school diploma to gain university admission.
- Based on the marks sheets provided, the beneficiary studies were for three years.
- The evaluator provided that one-year of education at an Indian University would be equivalent to one year of studies in the United States.
- The evaluator determined that "in the United States this award [Bachelor of Arts] equates to three years of academic credit which may be applied to a degree."

As the beneficiary only completed three years of education, and did not have the equivalent of a U.S. bachelor's degree based on the evaluation provided, the director denied the petition.

On appeal, the petitioner contends that CIS denied the petition in error, that *Matter of Shah* allows some exceptions to a four-year bachelor's degree, that some students obtain bachelor's degrees in three years, and that the petitioner submitted an educational evaluation to account for the degree's equivalency.

As noted above, "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)." The case does provide "generally," which might allow for schools that operate on trimester systems, or students who attend school year round and are able to complete a four-year bachelor's degree in a shorter time frame. However, in the present matter, that is not the case. The evaluation that the petitioner initially submitted does not even assert that the beneficiary's foreign degree is the equivalent of a U.S. degree, but instead provides that "this award [Bachelor of Arts] equates to three years of academic credit which may be applied to a degree."

⁶ Based on the beneficiary's degree copy provided, the dates that the beneficiary listed that he attended university on Form ETA 750B appear to be wrong. On appeal, the petitioner submitted a copy of the beneficiary's statement of marks for the degree to provide clarification. The statement of marks list that the beneficiary "was declared to have passed the Bachelor of Arts (3 year degree course) examination after qualifying in the following subjects [subjects listed]," dated December 16, 1977.

On appeal, the petitioner did not submit any additional evaluations, but instead submitted an article written by [REDACTED], [REDACTED], and [REDACTED] Career Consulting International, "*Does the value of your degree depend on the color of your skin?*"

The article's central premise is that the authors believe Indian three-year bachelor's degrees should be accepted for admission into U.S. Master's degree programs, and further should be accepted as the equivalent of U.S. Bachelor's degrees. The article discusses the foundation of the Indian educational system, which much of was developed pre-1947 under British rule. The authors provide that as the Indian system was based on a three-year program such as Oxford, Cambridge, and London, that for this reason, the authors believe the degrees should be treated as comparable to individuals holding three-year degrees. Many distinguish the British system as the United Kingdom provides an additional year of education, the "A" levels, following twelve years of education, in contrast to the Indian system of only twelve years of education. The authors continue that many well-regarded British universities will accept graduates with three-year bachelor's degrees for entry into their Master's programs. The authors do also note that they found a number of universities that "specifically stated that they would not accept the Indian three-year Bachelor's degree, and would only accept an Indian four-year degree or an Indian Master's degree for entry to a Master's program."

The authors do not distinguish whether the schools would admit these students fully to immediately begin Master's level studies, or whether the schools would admit the three-year degree holders provisionally with the need to complete another year of studies prior to beginning the Master's level studies.

The authors further provide that UNESCO (the United Nations Education Scientific and Cultural Organization) has produced several instruments, which provide that member states should "take all feasible steps" to provide recognition to qualifications in higher education awarded in other states.

The authors did not provide the UNESCO report. UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention on the recognition of qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same agreement. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. The United States was not a member of UNESCO between 1984 and 2002, and the Recommendation on the Recognition of Studies and Qualifications in Higher Education is not a binding legal agreement to recognize academic qualifications between UNESCO members. See <http://www.unesco.org> (accessed January 16, 2007).

The authors find further parallel in the Bologna process in the European Union where three-year first degrees are issued. The authors additionally quote educators from different schools as to whether they would accept three-year degrees. Some programs indicate that a student with a three-year degree could "apply," or that they are "eligible to apply."

Application to a Master's degree program is not synonymous with acceptance. The article does not distinguish how such students would be accepted, whether such acceptance would be full acceptance to immediately begin master's level course work, or whether a student could apply, but would be conditionally accepted into the program to begin following completion of another year of studies.

The authors conclude that there are valid reasons to accept Indian three-year bachelor's degrees as equivalent to bachelor's degrees issued in the U.S.

The authors provide theoretical arguments why the three-year Indian degree should be accepted. However, the arguments remain theoretical, and as the authors note, academics disagree on the proper interpretation of the three-year Indian degree. Further, unlike the British system, India does not have the 13th year of school similar to the "A" levels. Further, the petitioner specifically listed that the position required four years of college leading to a bachelor's degree in Economics.

In determining whether the beneficiary's diploma from the University of Osmania, India, is a foreign equivalent degree, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). ACCRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://accraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

Form ETA 750B lists that the beneficiary has a bachelor's degree in Economics from the University of Osmania, India. The documentation in the record reflects that the degree is a Bachelor of Arts degree. EDGE provides that a Bachelor of Arts/Bachelor of Commerce/Bachelor of Science awarded in India represents the attainment of a level of education comparable to two or three years of university study in the United States. *See attached.*

Based on information in the record, the beneficiary has completed a three-year course of study and was awarded a Bachelor of Arts degree, which would appear to be equivalent to three years of study towards a bachelor's degree in the U.S. We note that the degree does not list the field of study. Form ETA 750B does not list that the beneficiary completed any additional education. Further, we note that neither the evaluation the petitioner provided, or the statement of marks, list a field of study, or the beneficiary's field of study as "Economics." Specifically, the beneficiary's statement of marks shows that he took the following courses:

First Year:	Second Year:	Third Year:
Public Administration	Public Administration	Public Administration 3
Political Science	History 2	History 3
Economics	Political Science	Political Science 4
Sociology 1	Sociology 2	Sociology 4
		History 4

The evidence provided does not show that the beneficiary has the equivalent of a U.S. Bachelor's degree in Economics. The petitioner's evaluation provides that the beneficiary has completed three years of study towards a U.S. bachelor's degree, and does not list a field of study. EDGE provides that the beneficiary's education would be equivalent to three years of study in the U.S. The only evidence provided on appeal is a theoretical academic article that a three-year Indian degree should be accepted as a U.S. degree. Even if that theory were accepted, which we do not accept, it is not clear from the beneficiary's statement of marks that he would have a "degree in Economics" as required by the certified Form ETA 750.

Further, we note that the labor certification specifically designates that four years of education leading to a Bachelor's degree is required. The petitioner did not list that the beneficiary could have three years, or three years of education in combination with work, training, or unrelated degrees to meet the standard of bachelor's degree.

In response to the AAO's RFE, the petitioner provided that:

Our company's main goal was to hire a person with a Bachelor's degree in Economics that will be able to handle the job's requirements as set [forth] in the Application for Alien Employment Certification. As such, we attempted to hire any person that will fit same requirements. Thus, our office is satisfied with the above beneficiary's education since he met the requirement of a Bachelor's degree.

The petitioner also submitted a copy of the recruitment report that it sent to DOL. The ads provide that the candidates should have a "Bachelor's degree in Economics." The ads do not contemplate "or equivalent" or that anyone responding to the ad could meet the qualifications through lesser degrees and/or an alternate combination of education, training, and/or experience. Similarly, the internal job posting provides that the candidates should have a "Bachelor's degree in Economics." The posting does not contemplate lesser degrees and/or any alternate combinations of education, training, and/or experience. Therefore, the petitioner's intent concerning the actual minimum requirements of the proffered position do not include equivalency alternatives to a four-year bachelor's degree and U.S. applicants with qualifications less than a four-year U.S. bachelor's degree may not have had notice that they could have applied for the proffered position.

As set forth above, the beneficiary's three years of education in an unstated field of study would not meet the requirement of a four-year bachelor's degree in Economics.

The petitioner specifically drafted the labor certification to require four years of education to obtain a Bachelor's degree. The petitioner did not list that the beneficiary, or any qualified U.S. worker could meet this standard through an alternate combination of lesser degrees and/or education, training and experience. To read Form ETA 750 any other way at this juncture would be unfair to candidates without degrees, but with lesser degrees and/or an alternate combination of education and experience that might have qualified, but who did not respond to the ad based on how it was drafted.

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*. In this matter, the court's reasoning cannot be followed as it is inconsistent with the actual practice at DOL. Regardless, that decision is easily distinguished because it involved a lesser classification, skilled workers as defined in section 203(b)(3)(A)(i) of the Act. The court in *Grace Korean* specifically noted that the skilled worker classification does not require an actual degree, whereas the classification sought in this matter does.

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.*

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.

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 *Grace Korean* and *Snapnames* decisions are 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.

The beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," and, thus, does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act. In addition, the beneficiary does not meet the job requirements on the labor certification. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

Further, even if we were to consider the petition under the skilled worker category, the beneficiary would not meet the requirements of the certified ETA 750.⁷ As the petitioner specifies that a bachelor's degree is required, and the certified Form ETA 750 does not allow for meeting the degree requirement through any equivalency, the beneficiary would not meet the qualifications listed on the certified ETA 750. Therefore, the beneficiary cannot qualify as a skilled worker based on the certified ETA 750.

⁷ 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.

LIN-06-082-50986

Page 14

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.