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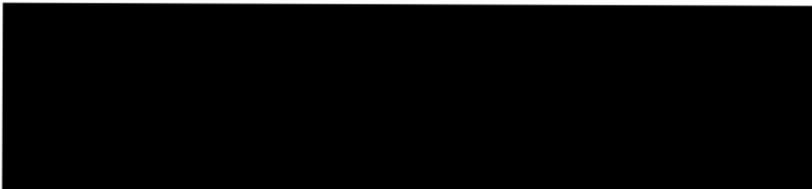
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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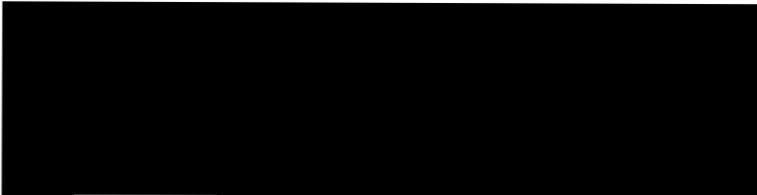


FILE: LIN 06 131 51266 Office: NEBRASKA SERVICE CENTER Date: JUL 01 2008

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:



INSTRUCTIONS:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

The petitioner is a pharmaceutical recruiting company. It seeks to employ the beneficiary permanently in the United States as a clinical applications specialist. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary who possessed a three year Bachelor of Commerce degree and a postgraduate degree from the Institute of Chartered Financial Analysts of India (ICFAI), is qualified to perform the duties of the proffered position because the petitioner has not established the beneficiary had a four year bachelor's of business administration in management information systems, or the foreign equivalent degree. 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 August 11, 2006 denial, the single issue in the current petition is whether the beneficiary is qualified to perform the duties of the proffered position.

Section 203(b)(3)(A)(i) of the Act 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 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.

In addition, 8 C.F.R. §204.5(l)(3)(ii)(C) states:

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

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 the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on November 10, 2003.

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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On appeal, counsel submits a brief and a copy of an interoffice memorandum written by William R. Yates, Former Associate Director, Operations, Citizenship and Immigration Services (CIS).² The record also contains a copy of the beneficiary's diploma from the University of Pune, India, that indicates the beneficiary completed a Bachelor of Commerce degree with coursework in business administration and cost and works accounting in April 1996; a copy of the beneficiary's Statement of Marks from the University of Pune that indicates the beneficiary took twelve courses during his studies at the University of Pune; a copy of the beneficiary's Post Graduate Diploma in Business Administration awarded by the ICFAI Business School, Hyderabad, India, on August 14, 1998, with accompanying grade sheets for two years of studies at the school.

The record also contains an educational equivalency report prepared by Harry Stucke, International Credentials Evaluation and Translation Services (ICETS). In his report, Mr. Stucke stated that the beneficiary's Bachelor of Commerce degree from the University of Pune was equivalent to three years of studies in an accredited U.S. institution, and that the combination of the beneficiary's undergraduate studies at the University of Pune and his postgraduate studies at ICFAI were the equivalent to the completion of a Bachelor of Business Administration in Management Information Systems from an accredited institute of tertiary education in the United States.

On appeal, counsel states that the director erred in his decision that the beneficiary did not meet the minimum requirements for the proffered position. Counsel states that the director misinterpreted the minimum requirements on the approved labor certification to require at least four years of college and either a U.S. bachelor's degree in the relevant field or a single foreign degree that equaled a U.S. bachelor's degree in business administration or management information systems. Counsel asserts that the petitioner, by indicating four years of college and a "bachelor's or equivalent" on Item 14 of the Form ETA 750, part A, the petitioner meant a U.S. bachelor's degree in the relevant field or the equivalent of such a degree based on any combination of education and/or employment experience. Counsel notes that the petitioner used the term "equivalent" in its broadest sense, meaning the equivalent of a U.S. bachelor's degree based on any combination of education, training and/or experience. Counsel also asserts that the director erred in not issuing a request for additional evidence (RFE) prior to denying the petition, and also in failing to consider whether the beneficiary qualified 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).

² Memorandum from William R. Yates, Associate Director For Operations, *Requests for Evidence (RFE) and Notices of Intent to Deny (NOID)* HQOPRD 70/2 (February 16, 2005).

On December 26, 2007, the AAO issued a RFE. In its RFE, the AAO questioned whether the beneficiary's combined Bachelor of Commerce diploma from the University of Pune and the ICFAI Business School Postgraduate diploma submitted to the record would be the equivalent of a U.S. baccalaureate degree or a foreign equivalent degree.

The AAO also 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.accrao.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.accrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

As stated in the RFE, EDGE provides a great deal of information about the educational system in India. It discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

In its RFE, the AAO stated that the record was not consistent with whether the beneficiary's course of studies at Hyderabad, India was actually an ICFAI course, and whether the coursework undertaken by the beneficiary was at the upper baccalaureate level, as the EDGE website stated. The AAO requested that the petitioner clarify the beneficiary's academic credentials, in particular with regard to the question of why only one statement of marks for the beneficiary's studies at the University of Pune was submitted, and the actual nature of his claimed post graduate studies at the ICFAI Business School.

The AAO also noted that the petitioner did not specify on the Form ETA 750 that the minimum academic requirements of four years of college and a bachelor's degree or equivalent might be met through a combination of lesser degrees, or that the labor certification application, as certified, demonstrated that the petitioner would accept a combination of degrees that are individually all less than a four-year U.S. bachelor's degree or its foreign equivalent when it oversaw the petitioner's labor market test.³ The AAO noted that on the

³ The U.S. Department of Labor (DOL) has provided the following field guidance: when the Form ETA 750 indicates, for example, that a "bachelor's degree in computer science" is required, and the beneficiary has a four-year bachelor's degree in computer science from the University of Florence, "there is no requirement that the employer include 'or equivalent' after the degree requirement" on the Form ETA 750 or in its

Form ETA 750, Part A, Item 21, the U.S. Department of Labor (DOL) requested information that describes “efforts to recruit U.S. workers and the results,” “specify[ing] sources of the recruitment by name.” This item requests recruitment information in order to allow DOL to determine whether the petitioner’s organization put forth good faith efforts to recruit U.S. workers which meet the regulatory guidelines found at 20 C.F.R. §§ 656.21(b)(1)(i)(A)-(F) and (ii) or 20 C.F.R. § 656.21(j)(1)(i)-(iv), depending on whether or not the Form ETA 750 was submitted under a supervised or unsupervised advertising or recruitment process. The AAO found no document in the record addressing these efforts as required under 20 C.F.R. §§ 656.21(b) or (j). The AAO also noted that although counsel on appeal states that the petitioner submitted the I-140 petition under both the professional and skilled worker classifications, the record of the initial I-140 submission does not reflect any such intention on the part of the petitioner. The petitioner’s cover letter, submitted with the I-140 petition and the ETA 750, states that it is essential that the applicant for the position possess extensive education and experience, and references the beneficiary’s academic credentials that had been evaluated as the equivalent of a Bachelor of Business Administration in Management Information Systems from an accredited U.S. college or university by the ICETS evaluator. The AAO stated that the record, as presently constituted, did not reflect that the petitioner would have accepted professional applicants with either combined educational degrees or skilled workers with significant amounts of post secondary education for the proffered position.

The AAO then requested that the petitioner provide probative evidence that it provided, *at the time it submitted to DOL its Form ETA 750 application and attachments*, the requisite “signed, detailed written report” of its reasonable good faith efforts to recruit U.S. workers prior to filing the application for certification. *See* 20 C.F.R. §§ 656.21(b) or (j).⁴ Specifically, the AAO requested a complete copy of the Form ETA 750 as certified by the

advertisement and recruitment efforts. *See* Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep’t. of Labor’s Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep’t. of Labor’s Empl. & Training Administration, Interpretation of “Equivalent Degree,” 2 (June 13, 1994). Further, where the Form ETA 750 indicates that a “U.S. bachelor’s degree or the equivalent” may qualify an applicant for a position, where no specific terms are set out on the Form ETA 750 or in the employer’s recruitment efforts to define the term “equivalent”, “we understand [equivalent] to mean the employer is willing to accept an equivalent foreign degree.” *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor’s Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). Where the Form ETA 750 indicates, for example, that work experience or a certain combination of lesser diplomas or degrees may be substituted for a bachelor’s degree, “the employer must specifically state on the ETA 750, Part A as well as throughout all phase of recruitment exactly what will be considered equivalent or alternative [to the degree] in order to qualify for the job.” *See* Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep’t. of Labor’s Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep’t. of Labor’s Empl. & Training Administration, Interpretation of “Equivalent Degree,” 2 (June 13, 1994). State Employment Security Agencies (SESAs) should “request the employer provide the specifics of what is meant when the word ‘equivalent’ is used.” *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor’s Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). Finally, DOL’s certification of job requirements stating that “a certain amount and kind of experience is the equivalent of a college degree does in no way bind [Citizenship and Immigration Services (CIS)] to accept the employer’s definition.” *Id.* To our knowledge, the field guidance memoranda referred to here have not been rescinded.

⁴ Under DOL’s regulations, it is the responsibility of CIS to ensure that the labor market test was *in fact* carried out in accordance with applicable law. *See* 20 C.F.R. § 656.30(d). The petitioner’s submission of the evidence requested therefore may help demonstrate that U.S. workers without four years of college and without bachelor’s degrees were in fact put on notice that they were eligible to apply for the proffered

DOL including any documentation that both reflects and summarizes the petitioner's recruitment efforts.⁵ Citizenship and Immigration Services (CIS) must be in receipt of the complete Form ETA 750 as certified by the DOL, including any attachments which the DOL incorporated into that form, before the petition may be approved. *See* section 203(b)(3)(C) of the Act; *see also* 8 C.F.R. § 204.5(a)(2)(which mandates that the Form I-140 be accompanied by the individual labor certification *as certified by the DOL*)(emphasis added). The AAO also asked that the petitioner please provide a copy of all supporting documents summarizing the petitioner's recruitment efforts, as previously presented to DOL, which might overcome any deficiencies or defects in the record outlined above.

In response, the petitioner submits the following evidence:

Copies of the beneficiary's Bachelor of Commerce degree from Pune University, with statement of marks for the years 1994, 1995, and 1996, along with a transcript record for all three years;

Copies of the beneficiary's transcript and diploma from the ICFAI Business School Post Graduate Degree BA for school years 1996 and 1997;

A copy of the beneficiary's Diploma in Business Finance from ICFAI of India dated February 11, 1998, with accompanying grade sheets, and a memorandum of marks;

An additional evaluation of the beneficiary's academic credentials, written by Dr. Gerald Itzkowitz, Morningside Evaluations and Consulting, New York, New York, dated March 4, 2008. In this document, Dr. Itzkowitz states that the combined three year course of study with the resulting Bachelor of Commerce and the ICFAI postgraduate diploma were the equivalent of a U.S. Bachelor of Business Administration, with a concentration in computer science;

Excerpts from an Internet website, http://www.winentrance.com/exama_date/ICFAI-Bueiness-School.html, that indicate eligibility to enter the ICFAI Business School in school year 2007 is based on "graduation with 50% and above." Other excerpts provide more information on the ICFAI Business Studies Aptitude Test (BISAT) described as an MBA entrance exam and indicate the eligibility criteria includes both graduates of a three and four year university with 50% and above aggregate marks;

Another Internet excerpt from <http://www.imsindia.com> that identifies the ICFAI Business School (IBS) as having been established in 1995 by the ICFAI. This document explains that with the exception of Dehradun, IBS is a constituent of the ICFAI. The excerpt also notes that the IBS has not sought any approval for its program from AICTE, based on legal advice;

position, despite the stated requirements of the Form ETA 750, and that the petitioner's organization did not in fact exclude U.S. workers with qualifications similar to those of the beneficiary from applying for and filling the position.

⁵ For example, advertisements, posting notices, results of recruitment report, correspondence to DOL, etc.

A copy of a letter to the Illinois Department of Employment Security, with regard to the petitioner's request for reduction in recruitment application for the labor certification for the beneficiary. The petitioner outlined its recruitment taken to fill the proffered position. The petitioner also identified the websites where it advertised its positions.

A copy of the posting notice utilized by the petitioner to advertise the position within its business facility. The posting notice requires a bachelor's degree or equivalent in Business Administration and Management Information Systems with one year of experience or equivalent in the position;

A copy of a job opening advertisement placed in *The Chicago Tribune*, dated August 24, 2003. The advertisement identifies the requirement for the position as "BA/eq in Bus. Admin & Mng info Systeme + 1 year experience/eq.;"

A copy of the petitioner's ads placed in *Monster.com* job vacancy website for a variety of 49 jobs under the titles consulting engineer, network engineering manager, integration engineer, senior technical consultant, and senior applications engineer, among others; and

Copies of the curriculum vitae of eight applicants interviewed for the proffered position and disqualified along with the petitioner's results of their telephone interviews.

In the petitioner's response, counsel states that based on the ICFAI website, the beneficiary's diploma received from ICFAI Business School in Pune was a post graduate diploma, reflecting his two years of further education following the completion of his three-year bachelor's degree. Counsel states that the ICFAI Business School is not accredited by AICTE; however, counsel points out that the EDGE materials submitted with the request for further evidence, provide:

"Several Associations have been reviewed for accreditation by the All India Council of Technical Education and more are under review; however, it is not necessary for programs to have AICTE accreditation to be considered for U.S. equivalency. . . . This report addresses qualifications awarded by the Institute of Chartered Accountants of India (ICAI) but U.S. equivalent qualifications are also awarded by a number of other associations, including the . . . Institute of Chartered Financial Analysts of India (ICFAI)."

Counsel further notes that the petitioner would have accepted applicants with combined educational degrees for the proffered position and notes that in the brief submitted to the record, counsel indicates that by indicating a bachelor's [degree] or equivalent" in Box 14 of Form ETA 750, the petitioner meant a U.S. bachelor's degree in the relevant field or the equivalent of such a degree based on any combination of education and/or employment experience. Counsel reiterates that the petitioner used the word "equivalent" in its broadest sense. Counsel notes that none of the eight applicants for the proffered position were rejected on the basis of their educational qualifications, but rather all were rejected because they lacked the required experience in the proffered position of Clinical Database Administrator. Counsel then concludes that based on the recruitment results, the petitioner would have considered applicants who lacked four-year bachelor's degrees.

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).

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.

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:

14.	Education	
	Grade School	8
	High School	4
	College	4
	College Degree Required	Bachelor's or equivalent
	Major Field of Study	Business Administration and Management Information Systems

The applicant must also have one year of experience in the job offered, the duties of which are as follows:

Develop annotated CRF's using Adobe Suite (PageMaker/FrameMaker/Manual). Build and test [O]racle clinical databases based on a CRF. Build and test [O]racle clinical data entry screens. Build and test data validation and derivation procedures in [O]racle clinical. Generate clinical database design reports/listing using Developer Reports/SQL/Ireview. Build and test data extract views, extract view templates, extract view macros in [O]racle clinical. Perform pre-lock checklist and locking of clinical databases in [O]racle clinical.

Item 15 of Form ETA 750A did not state any further special requirements.

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 stated he attended Pune University, in Pune, India studying commerce from June 1993 to 1996, and received a Bachelor of Commerce degree. The beneficiary also indicated that he had attended the ICFAI Business

School, also at Pune, India, studying finance from June 1996 to June 1998, and received a Master's in Finance and Systems.⁶

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 4 years of college, with a bachelor's degree in Business Administration and Management Information Systems or the equivalent, along with one year of experience in the proffered position.

The petitioner clearly delineated 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. *Id.* at 245.

With regard to the instant petition, the petitioner has submitted sufficient evidence to establish that the beneficiary studied for three years at the University of Pune and received a three-year Bachelor of Commerce. The question to be answered is whether the beneficiary, with his three-year degree in commerce and the postgraduate diploma in finance and systems, has the equivalent of a four-year baccalaureate degree in the field of business administration and management information systems. With regard to the issue of combining the three-year degree in commerce and the postgraduate degree from ICFAI, the AAO consulted "India A Special Report on the Higher Education system and Guide to the Academic Placement of Students in Educational Institution in the United States," co-written in 1997 by Leo J. Sweeney and Ravi Kallur, and published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) and NAFSA; Association of International Educators. This publication states the following with regard to the Institute of Chartered Financial Analysts of India (ICFAI):⁷

IC[FAI] was established in 1984 as a non-profit educational society to provide for competent financial analysts and investment managers by setting educational standards in the field of financial analysis, training, conducting examinations and awarding the designation of Certified Financial Analyst. No memberships are awarded. The CFA is recognized for employment throughout India. The postgraduate diploma in Financial Management is accredited by the AICTE and recognized for Ph.D admission by many Indian universities.⁸

⁶ The record also indicates that the beneficiary had ten months of work experience with the petitioner as a clinical database programmer from November 2002 to the time he signed the Form ETA 750, namely August 12, 2003. The record also indicated that the beneficiary worked at Turstek Inc, Metuchen, New Jersey from September 2001 to October 2002 as a system specialist with duties similar to those described on the Form ETA 750. Thus, the beneficiary appears to have more than one year of work experience in the proffered job. The AAO will not examine the beneficiary's work experience any further.

⁷ See page 35 of this publication.

⁸ The older PIER materials and the EDGE database appear to be in conflict as to whether the ICFAI postgraduate programs are accredited by the AICTE. The AAO also notes that the more contemporaneous Internet websites submitted by the petitioner to the record appear to support the petitioner's assertion that the ICFAI program is not accredited by the AICTE. All sources do identify the ICFAI program as a postgraduate program, and not a post secondary program.

However, the regulation relating to professionals, 8 C.F.R. § 204.5(l)(3)(ii)(C), contains a degree requirement in the form of an official college or university record. ICFAI is not an academic institution that can confer an actual degree with an official college or university record.

Evaluating the actual credentials held by the beneficiary is provided through 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.” With regard to the educational equivalency documents submitted to the record, both evaluators combined the beneficiary’s three years of studies at the University of Pune with the beneficiary’s post graduate studies at the ICFAI Business School in Hyderabad, India to determine the beneficiary had the equivalent of a U.S bachelor’s degree. The evaluators do not provide any further corroborating evidence to further establish how they arrived at their conclusions. Thus, the question of whether the combined studies from the University of Pune and the ICFAI Business School are equivalent to a four year bachelor’s degree in Business Administration and Management Information Systems is not definitively answered in the two educational evaluations.

In fact, Dr. Itzkowitz introduces a new subject matter into the beneficiary’s claimed academic equivalency, that of a baccalaureate degree in business administration with an emphasis in computer studies. The beneficiary’s complete course of studies at the University of Pune, indicates no coursework in computer studies. As stated previously, the beneficiary’s coursework at the two-year program at ICFAI indicates four courses taken in the school year 1997 and 1998. The AAO also notes that the actual job duties of the clinical database administrator, as outlined previously, do not appear to have any relevancy to the beneficiary’s primary studies in financial accounting at either the University of Pune or the ICFAI Business School. The AAO notes that the beneficiary’s course of studies at ICFAI include such courses as marketing management, personnel management, international finance, financial services, and business ethics. Only in the beneficiary’s final year at the Pune branch of the ICFAI, did the beneficiary take four courses in areas such as computer networks, management information systems, database management systems, and software engineering. The remainder of his coursework at the ICFAI Business School focused on finance and business.

Upon review of the eight applicants disqualified for the proffered position, as the petitioner correctly points out, they all had baccalaureate degrees;⁹ however, the petitioner found them unqualified based on their lack of work experience on Oracle clinical databases. Nevertheless, the AAO notes that all applicants have either baccalaureate degrees or master’s degrees, with three applicants having the requisite bachelor’s or master’s degree in the field of management or computer information sciences. Nevertheless, the applicants were found not qualified because they lacked the prior experience in Oracle clinical databases.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition’s priority date. *See* 8 C.F.R. § 103.2(b)(1), (12). *See also Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

⁹The majority of the applicants had master’s degrees in a relevant field.

The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The priority date for the instant petition is November 10, 2003. The approved labor certification in the instant case requires a bachelor's degree or equivalent in Business Administration and Management Information Systems and one year of experience in the proffered position. DOL assigned the occupational code of 039.162.010, Data Base Administrators, 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/crosswalk/DOT?s=030.162-014+&g+Go> (accessed May 2, 2008) 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 May 2, 2008). 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.

Therefore, a data base administrator may be analyzed as a professional position or as skilled worker since the normal occupational requirements do not always require a bachelor's degree but a minimum of two to four years of work-related experience. In this case, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, seeking classification pursuant to section 203(b)(3)(A) of the Act by checking box e in Part 2 of the I-140 form. Box e is for either a professional or a skilled worker. Therefore, CIS will examine the petition under the professional classification and the skilled worker classification, which requires a showing that the alien has two years of training or experience and meets the specific education, training, and experience terms of the job offer on the alien labor certification application.

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. 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. In the instant petition, the Form ETA 750 stipulates a four-year bachelor degree. While no degree is required for the skilled worker 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.

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 one year of employment experience.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), guiding evidentiary requirements for “professionals,” 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 regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for “skilled workers,” states the following:

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.

(Emphasis added).

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 the classification sought, the beneficiary must have a four-year bachelor’s degree or its foreign equivalent in Business Administration and Management Information Systems.

As stated in 8 C.F.R. § 204.5(l)(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 four year bachelor's degree. The petitioner simply cannot qualify the beneficiary as a skilled worker without proving the beneficiary meets its additional requirement on the Form ETA-750 of an equivalent three year foreign degree to a U.S. bachelor’s degree.¹⁰

¹⁰ Under the skilled worker classification, the petitioner would also have to establish that the beneficiary had

The issue before us 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. 8 C.F.R. § 204.5(l)(3)(B) (“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”). As noted above, the ETA 750 in this matter is certified by DOL.

The beneficiary possesses a foreign three-year bachelor’s degree and a two year postgraduate ICFAI diploma. Thus, the issues are whether either the degree, ICFAI postgraduate diploma in finance and systems or the combination is equivalent to a U.S. baccalaureate degree. We must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

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 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 not clearly stated.

In this case, the instant petition contains a position that qualifies in the skilled worker category. 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 alien meets the educational, training or experience, and other requirements of the individual labor certification.” As noted previously, the certified Form ETA 750 requires a Bachelor’s

two years of relevant experience. The record, based on various letters of work verification, establishes the beneficiary’s requisite two years of work experience.

degree or equivalent in Business Administration or Management Information Systems, and one year of experience in the job offered. The singular degree requirement is not applicable to skilled workers and the regulation governing skilled workers only requires that the beneficiary meet the requirements of the labor certification. As previously discussed, EDGE confirms that ICFAI postgraduate diploma represents attainment of a level of education comparable to a bachelor's degree in the United States. The ICETS educational evaluation concurs with EDGE and evaluated the beneficiary's three-year undergraduate degree and the postgraduate diploma from ICFAI as the equivalent to a U.S. bachelor's degree in business administration in Management Information Systems. Therefore, the AAO finds that the beneficiary holds an equivalent to a U.S. bachelor's degree in Management Information Systems, and thus, meets the educational requirements specifically set forth on the certified labor certification as a skilled worker in the instant case. This ground of the director's denial is withdrawn.

Thus, the petitioner has met its burden. The appeal is sustained.

ORDER: The appeal is sustained.