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U.S. Citizenship
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Services

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FILE: LIN 06 168 52031 Office: NEBRASKA SERVICE CENTER Date: JUL 14 2008

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

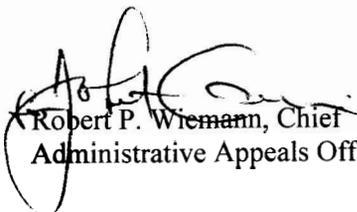
PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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


Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a financial services company. It seeks to employ the beneficiary permanently in the United States as a senior software engineer. 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 is qualified to perform the duties of the proffered position because the petitioner had not established the beneficiary had the equivalent of a bachelor's degree in computer science, mathematics, engineering, or a related field, as stipulated by Form ETA 750, Part A. 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 January 25, 2007 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 was accepted on August 15, 2002.

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 appeal¹.

On appeal, counsel submits the following evidence:

An excerpt from the Internet website for Regis College's three-year program in computer science;

An excerpt from the Internet with regard to a computer program of studies at Neumont University, South Jordan, Utah. This excerpt describes the program of studies as eight quarters, with a three-quarter academic year;

An excerpt from the University of Phoenix online website;

An excerpt from the Internet website for Clarkson University, Potsdam, New York. This excerpt describes the University's three-year bachelor of science in chemistry that calls for students to earn 108 credits by taking six courses each semester, with the remaining 12 credits comprising a combination of advanced placement credits achieved during high school, and special projects conducted over one or two summer sessions;

A printout from Westlaw of an article from a 2003 *Interpreter Releases* (80 No. 15 IR 547). This article is entitled "INS Clarifies Foreign Equivalent Degree Requirements for Members of the Professions Holding Advanced Degrees." The letters referred to in this article, namely a letter from [REDACTED] to Mr. Efren Hernandez III, Director of Business and Trade Services, dated December 27, 2002, and Mr. Hernandez's response to this correspondence, dated January 7, 2003 are also submitted.

A copy of a letter also written by [REDACTED], New York, New York, to Mr. Hernandez, dated June 30, 2003, and his response to this letter dated July 23, 2003.

A copy of the minutes from an American Immigration Lawyers Association (AILA) and Nebraska Service Center Liaison teleconference call on September 19, 2001. During the call, the question was raised as to whether a beneficiary who does not have a bachelor's degree, but rather the equivalence through work experience, plus an additional two years of work experience would qualify as a skilled worker. According to the minutes, the Nebraska Service Center liaison personnel responded affirmatively to this question.

Counsel also resubmitted the beneficiary's letters of work experience initially submitted with the petitioner's I-140 petition, as well as the beneficiary's educational credentials and an academic evaluation document dated August 2, 2000 written by Mr. [REDACTED], The Trustforte Corporation, New York, New York.

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).

In his letter, Mr. ██████ stated that the beneficiary, based on his studies at Hemwati Nandan Bahuguna (HNB) Garhwal University, completed three years of academic coursework in his academic specialization of botany, zoology, chemistry and related subjects. Mr. ██████ also stated that the nature of the courses taken by the beneficiary and the credit hours involved indicated that the beneficiary satisfied substantially similar requirements for the completion of academic studies leading to a Bachelor of Science degree from an accredited institution of higher education in the United States. Mr. ██████ also noted that the beneficiary had enrolled in a diploma program in Information and Systems Management at Aptech Computer Education, in India that offers both bachelor degree level and postgraduate level studies in computer studies and related fields. He also stated that the Advanced Diploma program² in Information and Systems Management consisted of one year of academic studies in computer science, with a concentration in information and systems management.

With regard to the Aptech diploma the beneficiary received in 1998, Mr. ██████ noted that the nature of the courses completed by the beneficiary indicated that he satisfied substantially similar requirements to the completion of one year of academic studies leading to a bachelor of science degree in computer science from an accredited U.S. institution of higher education.

In concluding his academic evaluation, Mr. ██████ noted the reputation of the beneficiary's university and of the Aptech computer education, the number of years of coursework, the nature of the coursework, the grades attained in the courses and the hours of academic coursework. He then stated that it was his judgment that the beneficiary attained the equivalent of a bachelor of science in computer science from an accredited U.S. institution of higher education.

With regard to the beneficiary's academic credentials, the record contains the following evidence:

A copy of the beneficiary's diploma from HNB Garhwal University, Dehradun, Srinagar, India, dated December 21, 1998. This document identifies the beneficiary's Bachelor of Science as a *three-year degree course under the 10+2+3 format*, and states the beneficiary obtained the degree from the university in 1996. The document further states that the beneficiary passed examinations during his first two years of studies in botany, zoology, and chemistry, and that in his third year, he passed examinations in botany and chemistry;

Copies of the beneficiary's Statement of Marks for his three-year course of studies at the HNB Garhwal University;

A copy of a postgraduate diploma in business management (PGDBM) from Shri Guru Ram Rai Institute of Technology and Science dated August 18, 2000. This document indicates that the

² The AAO notes that the beneficiary's documentation of his studies with Aptech Computer Education does not indicate that he received an Advanced Diploma. The AAO consulted a publication published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) "India: Special Report, PIER World Education Series, 1997. In Appendix D, the curriculum for the fulltime Advanced Diploma program included such courses as Introductions to UNIX and Structured COBOL Programming. The beneficiary's studies at Aptech Computer Education, as reflected in two Performance Reports included in the record, reflect fewer courses, and training in computer programs such as Word, Powerpoint, and MS-Office Manager. Thus the beneficiary's studies at Aptech Computer Education do not appear comparable to the coursework undertaken for the Advanced Diploma postgraduate program.

course of studies is "at par with MBA," was approved by AICTE, Ministry of HRD, Government of India, Dehradun, India, and notes the beneficiary's specialization was in Marketing;

A copy of the beneficiary's Statement of Marks for the two-year, four semester fulltime program at the Shri Guru Ram Rai Institute that the beneficiary attended from 1996 to 1998;

A copy of a diploma from Aptech Computer Education for a diploma in Information and Systems Management, Semesters I & II, that the beneficiary received in September 18, 1998. This document states the diploma was awarded for successfully completing the courses from the Aptech's Dehradun Center with the grade of "credit" given, and that the main programming language the beneficiary studied was Foxpro;

Two documents entitled "Performance Statement" that show the courses the beneficiary took during his two semesters in the Aptech Computer Education program in Dehradun, India. This document indicated the beneficiary received total marks of 60 and 65.8 points out of a possible 100 points on two examinations taken on February 8, 1998 and March 3, 1996, respectively; and

Copies of two certificates for training from Microsoft that indicate the beneficiary received training in Solution Developer and completed requirements to be recognized as a Microsoft certified professional.

On appeal, counsel asserts that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree, based on his graduate and post-graduate degrees in computer science, information systems management and business management from St. Joseph's Academy,³ HNB Garhwal University and Shri Guru Ram Rai Institute of Technology & Science located in Dehradun, India.

The director's decision stated that a foreign equivalent degree "is a degree awarded by an institution outside the U.S. for a course of study that is similar in complexity and length to a course of study for which an institution in the U.S. would grant a baccalaureate degree" and does not "include a series of diplomas or certificates."

Counsel asserts that the beneficiary's degree from HNB Garhwal University, a three-year program, is similar in length to a course of study for which a U.S. educational institution would grant a baccalaureate degree. Counsel refers to the documentation submitted to the record for Regis College and states that Regis College, Weston, Massachusetts grants a three-year computer science degree. Counsel also notes that Neumont University in South Jordan, Utah, grants a bachelor of science degree in two years, and that the University of Phoenix and Clarkson University in Potsdam, New York grant bachelor degrees in three years. Counsel notes that the beneficiary's course of studies at HNB Garhwal University was based on an intensive program of courses in zoology, chemistry and botany, and that each year of studies was more intensive and comprehensive than similar courses in the United States.

Counsel asserts that Mr. [REDACTED]'s evaluation of the beneficiary's academic credentials did find that the beneficiary holds a foreign equivalent degree, and did not rely upon the beneficiary's attainment of a three-

³ The record is not clear as to when the beneficiary attended St. Joseph's Academy as this school is not included in Part B, Form ETA 750. If St. Joseph's Academy is part of the beneficiary's secondary education, this academic credential would not be considered in the determination of the beneficiary's possession of a U.S. baccalaureate degree in the fields stipulated on the Form ETA 750.

year bachelor's degree and a one-year Diploma in Business Management to determine that the beneficiary had the equivalent of a U.S. bachelor's degree. Counsel notes that Mr. [REDACTED] stated in his evaluation that the beneficiary's three-year baccalaureate degree satisfied substantially similar requirements for the completion of academic studies leading to a bachelor of science degree from a U.S. accredited institution and also that the beneficiary's studies at Aptech Computer Education satisfied substantially similar requirements to the completion of one year of academic studies leading to a bachelor of science degree in computer science from an accredited U.S. institution.

Counsel asserts that neither the statute nor the regulations prohibit a determination of a U.S. baccalaureate educational equivalency based on a combination of foreign degrees. Counsel also notes that the term "foreign equivalent degree" is nowhere defined in the regulations governing employment-based immigrants. Counsel states that in the instant matter, the lack of a clear definition allows for arbitrary interpretation of what constitutes a foreign equivalent degree so that CIS can favor its definition over that of an evaluation service.

Counsel notes that CIS's decision regarding whether a foreign national possesses the equivalent of a U.S. bachelor's degree for third employment-based preference classification as a professional worker under INA section 203(b)(3) is inconsistent with the INA and corresponding regulations. Counsel further notes that some service centers have approved cases similar to the instant petition, while others have denied them. Counsel states that the CIS practice of granting EB-3 professional worker classification to some and denying it to others where the labor certification does not expressly define the educational equivalent and when the beneficiary has the equivalent of a U.S. bachelor's degree based on a combination of foreign degrees appears to be an arbitrary application of the law. Counsel states that the regulation provides for an expansive and inclusive definition of the term "foreign equivalent degree." Counsel also states that if CIS does not accept the petitioner's contention that the beneficiary's bachelor's degree alone is equivalent to a U.S. bachelor's degree, the petitioner requests that the CIS reconsider the beneficiary's combination of foreign degrees as the equivalent to a U.S. bachelor's degree. Counsel describes the beneficiary's academic credentials as one bachelor of science degree award in 1996 by HMB Garhwal University and two postgraduate diplomas from Aptech Computer Education and from Shri Guru Ram Rai Institute of Technology and Science in the field of business management.

Counsel refers to the two letters submitted to the record, one a letter to Efred Hernandez III, Director, Business and Trade Services in legacy INS, and his response to the inquiry. Counsel notes that the instant case does not involve a request for EB-2 classification as the Efred Hernandez letters referenced, but states that the definition of professional in the Act is the same for EB-2 and EB-3 classifications. Counsel states that if a combination of degrees is acceptable as equivalent to a U.S. bachelor's degree, it is inconceivable that such an opinion would not apply to the EB-3 classification.

In conclusion, counsel states that if CIS finds the considerations of the petitioner to be unsatisfactory, CIS should adjudicate the instant petition under the skilled worker classification. Counsel refers to the September 19, 2001 minutes of an AILA/Nebraska Service Center conference call, and states that the fact pattern referred to in the AILA/Nebraska Service Center minutes is applicable to the instant matter. Counsel asks that the adjudication of the instant case proceed as a skilled worker because the beneficiary has the required years of training/experience as stated in the labor certification application.

On appeal, counsel submits copies of two letters dated January 7, 2003 and July 23, 2003, respectively, from Efred Hernandez III of the INS Office of Adjudications to counsel in other cases, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2). In the July 2003 letter, Mr. Hernandez states that he believes that the combination of a post-

graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree.

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in Mr. Hernandez' correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates for a U.S. baccalaureate degree.

On appeal, counsel also submits a copy of minutes from an AILA/Nebraska Service Center teleconference, that discussed the situation of an I-140 petition for a beneficiary with no bachelor's degree, as stipulated on the ETA Form 750, but with work experience. Counsel notes that the Nebraska Service Center agreed that in such a hypothetical case, the beneficiary could qualify as a skilled worker. Counsel's reliance upon AILA's transcribed teleconference notes with the Nebraska Service Center is also misplaced. It is not clear that the hypotheticals in the AILA teleconference notes and other statements are to be interpreted as counsel does. The service center comments appear to be broad statements that the service centers will consider a petitioner's qualification in either a skilled worker or professional category of the third preference immigrant visa category and not necessarily a more specific finding that experience could substitute for a bachelor's degree. Even if the AILA teleconference notes were accurately interpreted by counsel, the transcribed teleconference notes are not precedent. It is noted that the AAO's authority over a service center is similar to that of a court of appeals and a district court. Even if a service center director had previously approved immigrant petitions on behalf of other similarly unqualified beneficiaries, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Counsel also asserts that the CIS service centers adjudicate petitions with similar regulatory issues differently, and that the decisions in such petitions can be arbitrary. The AAO notes that the regulatory and adjudicatory standards are the same for all service centers. The petitioner noted that CIS, through its service centers, has approved or denied other petitions with similar regulatory or adjudicatory issues. If previous immigrant petitions were approved based on the same assertions that are contained in the current record, the approvals would constitute gross error on the part of the service centers. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); *cert. denied*, 485 U.S. 1008 (1988).

To determine whether a beneficiary is eligible for an employment based immigrant visa, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406

(Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the Application for Alien Employment Certification, Form ETA 750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of software engineer. Item 14 describes the requirements of the proffered position as follows:

- | | | |
|-----|-------------------------|--|
| 14. | Education | |
| | Grade School | X |
| | High School | X |
| | College | X |
| | College Degree Required | Bachelor's |
| | Major Field of Study | C[omputer] S[cience], m[a]th[e]m[at]i[cs],
Eng[i]n[ee]r[ing], or rel. field |

The applicant must also have three years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A, or three years in the related occupation of software engineer, developer, or programmer analyst. Item 15 of Form ETA 750A stated "Microsoft certification required."

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 D.B.S. College HNB, Garhwal University, Dehradun, studying science from May 1993 to May of 1996, and received a bachelor's in science. The beneficiary also stated that he attended Aptech Computer Education, Dehradun, India, studying computer science from May 1996 to February 1998, and received a diploma in information and systems management. He also stated that he had attended Shri Guru Ram Rai Institute of Technology and Science, India, studying business management from June 1996 to July 1998, and received a "P.G. Diploma in Business Management." In Part 12, the beneficiary stated that he was a Microsoft Certified Professional (Solution Developer).

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 college, with a bachelor's degree in computer science, mathematics, engineering or a related field, and three years of work experience in the proffered position or in the related field of software engineer, developer or programmer analyst.

The petitioner did not clearly delineate four years as the required number of years required for the bachelor's degree requirement on the Form ETA 750A. However, it is noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245. Counsel on appeal references several U.S. colleges that have three-year baccalaureate programs in computer science and other fields. Counsel's argument is not persuasive. Counsel's reference to these particular colleges does not establish that a bachelor's degree in the United States does not usually require four years of university-level studies. Nor does counsel establish that the beneficiary's studies in his three-year course of university-level studies in botany, zoology, and chemistry would be the equivalent of the previously-referenced colleges' three-year degree programs in computer science.

An evaluation of the educational credentials held by the beneficiary is provided through credential evaluations submitted into the record of proceeding for this case. It is noted that *Matter of Sea Inc.*, 19 I&N Dec. 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.”

Contrary to counsel's assertions on appeal, Mr. ██████████ does combine the beneficiary's studies in his educational equivalency evaluation. Mr. ██████████ examined the beneficiary's three years of studies in botany, zoology, and chemistry at HNB Garhwal University, and his one year of studies at Aptech Computer Education in Dehradun, India, and concluded that these two periods of studies were the equivalent of a bachelor of science degree in computer science from an accredited U.S. institution of higher education. Although Mr. ██████████ does not explicitly state this, it appears he views the Aptech Computer Education coursework as a post-secondary program, rather than a post-graduate program, since he combines this coursework with the beneficiary's three-year baccalaureate studies.

Mr. ██████████ also stated that based on the courses and credit hours involved the beneficiary had substantially similar requirement to the completion of academic studies leading to a Bachelor of Science degree from an accredited U.S. educational institution based solely on his studies at HNB Garhwal University. However, Mr. Silberzweig does not provide any specific analysis for his statement with regard to the beneficiary's three-year course of studies being the equivalent of a U.S. baccalaureate degree in computer science, engineering, or mathematics. The AAO also notes that Mr. ██████████ did not comment on the beneficiary's post-graduate diploma from Shri Guru Ram Rai Institute of Technology and Science with a specialization in marketing in his evaluation.

The educational evaluation report does not answer several relevant questions with regard to the beneficiary's baccalaureate studies. First, the evaluator does not address whether the beneficiary's studies in fields unrelated to computer science can be utilized in part to establish a degree equivalent to a baccalaureate degree in computer science, or one of the other fields stipulated on the Form ETA 750. Second, the evaluation does not address the question of whether the studies undertaken by the beneficiary at Aptech Computer Education were at a post-secondary or post-graduate level. What the evaluation appears to do is combine three years of baccalaureate-level studies in fields unrelated to the fields stipulated on the Form ETA 750 with an additional year of either post-secondary or post-graduate level study in a related field to determine that the beneficiary has a degree equivalent to a four-year U.S. baccalaureate degree in computer science, a field in which the beneficiary has one year of possible university level studies. Thus, the educational evaluation report submitted to the record is clearly flawed and is given limited weight in these proceedings.

The petitioner is not only submitting two degrees to establish that the beneficiary has a degree equivalent to a four-year U.S. baccalaureate degree, but is submitting evidence of two unrelated degrees that are not the equivalent of a four-year U.S. baccalaureate degree in computer science. As stated previously, the beneficiary has a three-year university bachelor of science degree with principal studies in botany, zoology, and chemistry, with only one year of possible university-level studies at the Aptech Computer Education program in computer science. Further, the beneficiary's additional studies at Shri Guru Ram Rai Institute of Technology and Science resulted in a postgraduate degree in business management with a specialization in marketing, another field not stipulated on the Form ETA 750.

On appeal, counsel asserts that there are no rules or regulations that state that only a single degree is allowed for equivalency to a U.S. baccalaureate degree under the professional employment-based category. Counsel

also refers to correspondence between Efren Hernandez and private practitioners. Contrary to counsel's assertions on appeal, 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(1)(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.

The petitioner clearly established that it was filing the instant petition under the employment-based professional classification. The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C), providing the 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.

Counsel states that if the proffered position does not qualify as a professional position, that the proffered position should be considered that of a skilled worker. However, whether the petition is filed for a professional or a skilled worker, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA 750 which, in this case, includes a bachelor's degree in computer science, mathematics, engineering, or a related field. While the petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor initially, or a new Form ETA 750 could have been submitted to accompany the employment-based immigrant petition for a skilled worker, this was not done. Since that was not done, and the Form ETA 750 submitted with the I-140 petition clearly indicates that the position requires a baccalaureate degree, the director's decision to deny the petition must be affirmed.

The beneficiary was required to have a bachelor's degree in computer science, mathematics, engineering or a related field, and three years of work experience in the proffered position or in the related field of software engineer, developer or programmer analyst. Based on the beneficiary's educational documentation, namely, his diploma from HNB Garhwal University, his diploma from Aptech Computer Education center, and his postgraduate diploma from Shri Guru Ram Rai Institute of Science and Technology, he does not possess a baccalaureate degree in computer science, mathematics, engineering or a related field, although the beneficiary does possess the requisite three years of work experience in the proffered position or in the related field of software engineer, developer or programmer analyst. Neither the petitioner nor counsel has asserted that the beneficiary's studies in botany, zoology and chemistry in his three-year university level studies would be considered a field related to computer science, mathematics, or engineering. Contrary to counsel's assertions, Mr. Silberzweig does appear to combine the beneficiary's undergraduate studies with his studies at Aptech Computer Center in his evaluation. The AAO does not view the beneficiary's three years of studies combined with either the beneficiary's one year study with Aptech Computer Science and his two years of study in business management to be equivalent to a four-year program of studies undertaken to achieve a bachelor's degree in computer science, mathematics, engineering or a related field.

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

ORDER: The appeal is dismissed.