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20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE:

EAC-04-221-52073

Office: VERMONT SERVICE CENTER

Date: MAR 10 2008

IN RE:

Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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, Vermont Service Center (“director”), denied the employment-based immigrant visa petition. The petitioner filed a Motion to Reopen the decision. The director affirmed his prior decision. The petitioner appealed and the matter is now before the Administrative Appeals Office (“AAO”). The appeal will be sustained.

The petitioner has a business related to CODASYL Technology Database Management, and seeks to employ the beneficiary permanently in the United States as a database administrator. 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).<sup>1</sup>

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:

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<sup>1</sup> 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 December 12, 2003. The proffered wage as stated on the Form ETA 750 is \$68,500.00 per year based on a 40 hour work week. The Form ETA 750 was certified on May 14, 2004, and the petitioner filed the I-140 petition on the beneficiary's behalf on July 21, 2004. The petitioner listed the following information on the I-140 Petition: date established: 1987; gross annual income: \$1.6 million; net annual income: \$22,000; and current number of employees: 6.

On February 4, 2005, 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. 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 filed a Motion to Reopen and asserted that the beneficiary was qualified and had qualified for H-1B status as a professional worker based on his same credentials. Further, the petitioner asserted that all the recruitment included "or technical training equivalent," so that U.S. workers were informed that they could qualify for the position based on alternate credentials. The director determined that the petitioner did not overcome the basis for the denial and affirmed his prior decision. The petitioner appealed to the AAO.

On August 23, 2007, the AAO director issued an RFE, which requested that the petitioner provide a copy of the entire recruitment file submitted to DOL. The petitioner did not respond, however, the record does contain parts of the recruitment file that the petitioner previously submitted with its Motion to Reopen, which exhibit how the petitioner advertised the position to the public.

On appeal, the petitioner provides that Citizenship & Immigration Services ("CIS") was in error, as the beneficiary had an equivalent bachelor's degree as exhibited by the evaluation that the petitioner submitted.

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.

The proffered position requires a four-year bachelor's degree and five years of experience in a related occupation where the individual gained experience with CODASYL DBMS & RDB. Because of those requirements, the proffered position is for a professional, but might also be considered under the skilled worker category. DOL assigned the occupational code of 039.162-010, "Database Administrator," 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).<sup>2</sup> 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 "Higher National Certificate" based on studies at a foreign institution, as well as work experience. Thus, the issues are whether the beneficiary's foreign program of study is equivalent to a U.S. baccalaureate degree or, if not, whether it is appropriate to consider the beneficiary's work experience and/or his prior studies. We must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

#### **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-

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<sup>2</sup> 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 Database Administrator had a SVP of 8 allowing for four to ten years of experience.

(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).<sup>3</sup> 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.

\* \* \*

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).

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<sup>3</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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)(A)(ii) 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 *Madamy*, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

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 database administrator provides:

Research, design and develop computer software systems and enhancements for solutions of business problems based upon narrative statements, program specifications and other data as source materials; provide remote and on-site support for customers with CODASYL and Rdb issues; Develop methods to insure reliability and availability of customer database environments; Develop, enhance and implement tools for managing, analyzing and repairing CODASYL and Rdb-based database systems; Review proposed and implemented changes to database design to understand how changes to be made affect management of physical database; Calculate optimum values of database parameters; Test and correct errors and refine changes to database; Select and enter codes of utility programs to monitor database performance; and confer with customers to ensure the highest level of CODASYL and Rdb database reliability and performance possible.

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:

Education: College: 4 years;  
College degree: Bachelor’s degree;  
Major Field Study: Computer Science or Equivalent

Experience: No experience in the job offered, or 5 years in a related occupation where the individual gained experience with CODASYL DBMS & RDB.

Other special requirements: Ability and willingness to travel overseas to customer sites; 5+ years experience with CODASYL DBMS.

To determine whether a beneficiary is eligible for a preference immigrant visa, CIS must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary’s qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In looking at the beneficiary’s qualifications, on Form ETA 750B, signed by the beneficiary, the beneficiary listed his prior education as: (1) Stow College, Glasgow, Scotland; Field of Study: Civil Engineering; from August 1978 to June 1980, for which he received an Ordinary National Certificate; and (2) Stow College, Glasgow, Scotland; Field of Study: Computing; from February 1996 to June 1998, for which he received a Higher National Certificate.

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: Globe Language Services, New York, New York.
- The evaluation considered the beneficiary's Higher National Certificate, which is based on completion of a National Certificate.
- The evaluator found that the beneficiary's part-time program of study completed in 1998 combined with his prior studies, where he earned an Ordinary Certificate, were equivalent to three years of undergraduate study in computer science.
- The evaluator also considered a portion of the beneficiary's experience, specifically five years and seven months of the beneficiary's experience from 1993 to 1998. The evaluator provides that the beneficiary's experience was progressively responsible and three of those years would equate to one additional year of education in computer science.
- Thus, the evaluator provides that the beneficiary's three years of study combined with his additional equivalent work experience, would equate to the equivalent of a bachelor's degree in computer science in the U.S.

The director denied the petition as the Form ETA 750 required that the petitioner have a four-year bachelor's degree, and the beneficiary's degree equivalent based on his education and experience did not meet the standard of 8 C.F.R. § 204.5(l)(3)(ii)(c). Based on Form ETA 750, the petitioner did not demonstrate that the beneficiary met the requirements of the position. As the evaluation relied on a combination of education, the petitioner did not demonstrate that the beneficiary had the required four years of education leading to a bachelor's degree.

The petitioner filed a Motion to Reopen and provided copies of recruitment submitted with the petitioner's ETA 750 filing. The recruitment contained a job posting on a related website and listed the requirements as: "5+ years experience as a DBA of Oracle CODASYL DB," and "Bachelor's degree in technical area OR technical training." A second website posting listed the same requirements and "Bachelors degree in technical area OR technical training equivalent." A third posting on the "The Telegraph Online," an internet site connected with the Nashua Telegraph newspaper listed the requirements as "must have 5+ years DBA experience specifically with Oracle CODASYL DBMS and extensive VMS and DCL experience." The petitioner listed the position on its website requiring: "5+ years experience as a DBA of Oracle CODASYL DBMS databases," and "Bachelor's degree in technical area OR technical training equivalent."

The director provided that "the evidence that you have submitted supports that your recruiting efforts sought an individual with a bachelor's degree or technical training equivalent." However, for approval as a professional, 8 C.F.R. § 204.5(l)(3)(ii)(c) requires that the beneficiary have a U.S. bachelor's degree for approval. The beneficiary's combined education and experience would not meet that standard.

On appeal, the petitioner provides that it has employed the beneficiary as a professional worker in H-1B status for six years. The petitioner cites to the H-1B nonimmigrant standard, 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) that an equivalent degree may be acquired "through a combination of education, specialized training, and/or work experience in areas related to the specialty." The petitioner further cites that "for purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks." The petitioner

provides that the beneficiary has over 23 years or practical computer work experience, the last ten years of which the beneficiary spent “analyzing and managing mission critical databases.”

8 C.F.R. § 214.2(h)(4)(iii)(D)(5) relates to meeting the professional standard for a nonimmigrant petition, and would be relevant to whether education and experience could be combined to obtain nonimmigrant H-1B approval. The rule to equate three years of experience for one year of education applies to non-immigrant H-1B petitions, but not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5).

The specific difference relates to how the form was drafted. Based on how the petitioner drafted the Form ETA 750, the beneficiary was required to have a four-year bachelor’s degree.

The petitioner did list “Bachelor’s degree, Comp. Sci. or Equivalent,” but did not specifically set forth how the equivalent may be met. To ascertain the petitioner’s expressed intent in advertising the position requirements, the AAO sent the petitioner an RFE.

The petitioner did not respond to the RFE, but the record does contain the critical pieces of the documentation submitted in connection with the Form ETA 750 filing. As noted above, the petitioner phrased the recruitment to include: “5+ years experience as a DBA of Oracle CODASYL DB,” and “Bachelor’s degree in technical area OR technical training equivalent.”

The recruitment advertised to the public was more expansive than what the petitioner listed on Form ETA 750 to include technical areas of study beyond strictly computer science. Further, the advertisements provided that an individual could qualify through a “technical training equivalent.” Although vaguely stated, “technical training equivalent” should be sufficient to alert U.S. workers that they might be considered by meeting the bachelor’s degree standard through technical training or experience.

Based on the recruitment completed and position as it was advertised to U.S. workers, we would conclude that the petitioner’s intent concerning the actual minimum requirements of the proffered position would include equivalency alternatives to a four-year bachelor’s degree.

As the beneficiary can only show that he has an equivalent degree and not a single degree that is a bachelor’s degree, the position would not qualify as a professional position.

However, we may consider the petition under the skilled worker category. Section 203(b)(3)(A)(i) of the 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 regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides that 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 . . . The minimum requirements for this classification are at least two years of training or experience.”

As the beneficiary can show that he has a bachelor’s degree equivalency in the required field, and the position requires at least two years of training or experience, we will consider the petition under the skilled worker category. On this basis, the petitioner has sufficiently documented that the beneficiary met the qualifications of the certified labor certification as a skilled work based on his bachelor’s equivalency and over five years of documented experience in the required area. Specifically, the petitioner provided an evaluation of the beneficiary’s education to show its U.S. equivalency, as well as four letters to document the beneficiary’s

computer related work experience from the years 1984 to December 1998.<sup>4</sup> The letters all met the requirements of 8 C.F.R. § 204.5(l)(3)<sup>5</sup> in that they provided the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien. Accordingly, the petition was accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification

Based on the foregoing, the petitioner has established that the beneficiary met the qualifications of the certified labor certification. 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 been met.

**ORDER:** The appeal is sustained. The petition is approved.

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<sup>4</sup> The beneficiary lists that he began employment with the petitioner in April 1999, and has documented his experience prior to joining the petitioner.

<sup>5</sup> A beneficiary is required to document prior experience in accordance with 8 C.F.R. § 204.5(l)(3), which provides:

(ii) *Other documentation*—

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

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