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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: JUL 3 0 2012 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petitioner filed an appeal, which was initially rejected by the Chief, Administrative Appeals Office (AAO), as untimely filed. The AAO subsequently determined that the appeal had been timely filed, and reopened the proceeding on its own motion. The appeal is now before the AAO for consideration on the merits. The appeal will be dismissed.

The petitioner is an IT (information technology) management and technical services company. It seeks to permanently employ the beneficiary in the United States as a senior programmer analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). This section of the Act provides for immigrant classification to members of the professions holding advanced degrees whose services are sought by employers in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The Director denied the petition on the ground that the beneficiary did not have the requisite educational degree to qualify for the proffered position under the terms of the Form ETA 750 (labor certification) and to be eligible for classification as an advanced degree professional under the Act.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

Case history

The petitioner filed its Form I-140, Immigrant Petition for Alien Worker, on June 8, 2007. As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, which was filed at the Department of Labor (DOL) on May 20, 2003 (the priority date), and certified by the DOL on May 9, 2007.

The labor certification specifies (Boxes 14 and 15 of the Form ETA 750) that the minimum education and experience required for the job is either (1) four years of college and a bachelor's degree "or equivalent" in computer science or a related field, plus five years of experience in the job offered or a related occupation, or (2) a master's degree in computer science or a related field, plus two years of experience in the job offered or a related occupation.

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations 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 submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

The Director denied the petition on January 16, 2008. While finding that the beneficiary had the requisite work experience (five years), the Director also found that the beneficiary's three-year Bachelor of Science degree from [redacted] was not equivalent to a U.S. bachelor's degree because it did not require four years of study. The Director found that the three evaluations of the beneficiary's Indian education submitted by the petitioner were substantively inadequate and failed to establish the claimed equivalency to a U.S. bachelor's degree. Since the beneficiary's Indian degree was not a "foreign equivalent degree" to a U.S. baccalaureate, the Director concluded that the beneficiary did not meet the educational requirement of the labor certification and was not eligible for classification as an advanced degree professional.

The petitioner filed an appeal, accompanied by a brief from counsel and an additional evaluation of the beneficiary's Indian education. After initially rejecting the appeal on the ground that it was not timely filed, the AAO determined that the appeal had actually been timely filed and reopened the proceeding *sua sponte* pursuant to its authority under 8 C.F.R. § 103.5(a)(5)(ii).

On November 15, 2011, the AAO sent the petitioner a notice of intent to dismiss the appeal (NOID), with a copy to counsel. The AAO analyzed the evaluations previously submitted by the petitioner and reiterated its doubts about the reliability of their conclusions as to the U.S. equivalency of the beneficiary's educational credentials from India. The AAO referred to information in the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), which indicated that a bachelor of science degree in India was comparable to only two or three years of university study in the United States, not a full bachelor's degree. The petitioner was invited to submit any additional evidence it might have within 45 days. The petitioner filed a timely response with an additional brief from counsel and supporting documentation.

The issues on appeal are the following:

- Does the beneficiary have the requisite educational degree to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act?
- Does the beneficiary have the requisite educational degree to qualify for the job of senior programmer analyst under the terms of the labor certification?

Is the Beneficiary Eligible for the Classification Sought?

As previously discussed, the Form ETA 750 in this case is certified by the DOL. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* Section 212(a)(5)(A)(i) of the Act, 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the 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. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977).[2] This decision involved a petition filed under 8 U.S.C. §1153(a)(3) of the Act, as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Immigration Act of 1990 Act added section 203(b)(2)(A) to the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244, is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference (advanced degree professional) immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the INS 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:

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[2] In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both 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 (Nov. 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)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. at 245. 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."[3] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2).

The degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a

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[3] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).[4]

The documentation of record shows that the beneficiary earned the following post-secondary educational credentials in India:

- A "Bachelor of Science in Computer Science" from the on March 1, 1994, following completion of a three-year, six-semester degree program and a closing examination in November 1992.
- A "Diploma in Applications Programming" from on October 14, 1993, following completion of a program that ran from June 20, 1992 to September 30, 1992.
- A "Diploma in Computer Application and Networking" from on February 12, 1994, after completion of a one-year, six-subject course of study.

On appeal and in its response to the NOID, counsel reiterates its contention that the beneficiary's Indian education (either the bachelor's degree standing alone, or the bachelor's degree in combination with his subsequent computer credentials) is equivalent to a U.S. bachelor's degree in computer science, thereby making the beneficiary eligible (in conjunction with his five years of progressive experience in the computer field) for classification as an advanced degree professional. The AAO does not agree with counsel's claim.

In his first line of argument on appeal, counsel challenges the Director's reliance on *Matter of Shah* for the finding that a three-year bachelor's degree in India is not equivalent to a U.S. bachelor's degree. Counsel quotes the following language in that INS decision:

> "The United States Department of Health, Education, and Welfare (HEW)[5] advises that a B.S. degree in chemistry from is the equivalent of a B.S. degree in the United States . . ."

Matter of Shah, 17 I&N Dec. at 245. Based on that language counsel asserts that *Matter of Shah* "in fact" holds that a three-year degree in chemistry from India is equivalent to a U.S. bachelor's degree in chemistry. Extrapolating from that conclusion counsel claims that the beneficiary's three-year Bachelor of Science degree from is also equivalent to a U.S. bachelor's degree. The AAO does not agree with counsel's interpretation. While the Regional Commissioner cited the

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[4] *Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

[5] In 1979, a separate Department of Education was created from this department, and HEW was renamed as the Department of Health and Human Services (HHS).

Department of HEW's advisory regarding the U.S. equivalency of a bachelor's degree in chemistry from , the Regional Commissioner did not endorse that view in *Matter of Shah*. In fact, the Regional Commissioner stated as follows:

> [The alien's transcript] raises serious questions about the validity of the [alien's] degree in that this transcript was issued at the end of the [alien's] *second* year of study at , yet, the [alien] completed his studies at 1 year later in April 1971. Thus, he could only have completed a 3-year course of study, which is not equivalent to a United States baccalaureate degree, usually requiring 4 years of study.

Id. Thus, while the length of the alien's degree program at may not have been the central issue decided in *Matter of Shah*, it is clear that the Regional Commissioner did not view a three-year degree from an Indian university as equivalent to a bachelor's degree in the United States, because U.S. baccalaureate degrees are usually four-year programs. The AAO agrees with the Director's interpretation of *Matter of Shah*, which confirms that a bachelor's degree in India comprising three years of study is not equivalent to a bachelor's degree in the United States.

As previously mentioned, the AAO has consulted the database (EDGE) created by AACRAO as a resource for determining the U.S. equivalency of foreign degrees. According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[6] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* U.S. Citizenship and Immigration Services (USCIS) considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[7]

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[6] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

[7] In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The

EDGE states that a Bachelor of Science degree in India is awarded upon completion of two to three years of tertiary study beyond the Higher Secondary Certificate (comparable to a U.S. high school diploma), with the great majority being awarded after three years of tertiary study. The Indian degree program is comparable to study at a U.S. college or university for the same number of years. According to EDGE, therefore, the beneficiary's three-year bachelor's degree from is more likely than not comparable to three years of study at a U.S. college or university, not a U.S. bachelor's degree as claimed by the petitioner.

Counsel challenges the AAO's utilization of AACRAO's EDGE as a resource, characterizing it as an inappropriate preferential endorsement of its education evaluation service over other credential evaluation services. The AAO does not agree. In reviewing this petition, the AAO has not relied on an evaluation by AACRAO of the beneficiary's specific educational credentials. Rather, it has utilized information from AACRAO's database – EDGE – that has been vetted by a panel of experts and has general applicability to all bachelor of science degrees in India. The evaluations submitted by the petitioner, on the other hand, are essentially the individual opinions of their respective authors as to the U.S. equivalency of the beneficiary's Indian education. The AAO considers EDGE to be a more reliable resource in this instance.

The petitioner has submitted multiple evaluations of the beneficiary's educational credentials. They are from:

- of in New York City, dated December 1, 1999;
- in London, England, dated September 13, 2007;
- in Dominica, undated, and
- in New York City, dated July 2002.

The evaluations from conclude that the beneficiary's Bachelor of Science in Computer Science from is equivalent to a U.S. bachelor of science in computer science. The evaluations of , on the other hand, rate the beneficiary's three-year Bachelor of Science from India as comparable to three years of study (not a full bachelor's degree) from a U.S. college or university. But the evaluations also conclude that the beneficiary has the equivalent of a U.S. bachelor's degree based on the totality of his studies. For , the U.S. equivalency is based on the beneficiary's three years of study at plus the one-year Diploma in . For , the U.S. equivalency is based on the beneficiary's three years of study at plus the

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court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

one-year Diploma in ; (as well as a Certificate in &) from . None of these evaluations is persuasive.

The AAO will first address the evaluations from , and According to the EAU's website, www.thedegree.org/apel.html (accessed July 15, 2012), the "university" awards degrees based in part on experience.

Mr. lists the courses in the beneficiary's Bachelor of Science program at and concludes that the three-year program comprised 174 "contact hours using the Carnegie Unit." does not explain how he determined the individual course credit numbers, however, most of which are 6 but two of which are 12. The beneficiary's transcript does not provide any information as to classroom hours or credits. Absent any explanation as to the basis of the credits Mr. assigned to the beneficiary's individual courses, there is no basis to find that the substance of the beneficiary's degree program exceeded three academic years and was equivalent to four years of study in the United States. Thus, superficial course content analysis does not demonstrate that the beneficiary's Indian degree is equivalent to a U.S. bachelor's degree.

Mr. claims that the beneficiary's three-year Indian degree was equivalent 174 "semester credit hours" from a U.S. institution of higher education – equivalent to a U.S. baccalaureate degree – but makes no attempt to assign credits for individual courses or explain how he calculated the total figure. 's credibility is seriously diminished by his distortion of an article by and . Mr. touts the article's conclusion that because the United States is willing to consider three-year degrees from Israel and the European Union, "Indian bachelor degree-holders should be provided the same opportunity to pursue graduate education in the U.S." While this is the conclusion of the article, the specific means by which Indian bachelor degree holders might pursue graduate education in the United States provided in the discussion portion of the article in no way suggests that Indian three-year degrees are, in general, comparable to a U.S. baccalaureate. Specifically, the article proposes accepting a first class honors three-year degree *following* a secondary degree from a or program *or* a three-year degree *plus* a post graduate diploma from an institution that is accredited or recognized by the and/or . The record contains no evidence that the beneficiary in this matter received a secondary degree from a or program. Moreover, his Bachelor of Science degree states that he was not placed in the first class, but rather in the second class after Part I and the third class after Part II of his final

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[8] and both claim to have a canonical diploma of , equivalent to a Doctorate of Divinity, from The AAO has found no website for this institution or any other online evidence of its existence. The petitioner's counsel has submitted a Wikipedia excerpt on , but has not demonstrated that this institution is the same as the one identified in the evaluations, which bears a different name and appears to have a different location.

examination. Finally, the record does not show that any of the beneficiary's educational credentials following his three-year bachelor's degree constituted a post-graduate diploma from an institution accredited or recognized by the or the Thus, Mr. reliance on the article is disingenuous.

reliance on *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. Nov. 30, 2006) is equally misplaced. In that case, the alien not only had a credential beyond a three-year degree, the judge determined that even with that extra credential, the alien was only eligible as a skilled worker pursuant to section 203(b)(3) of the Act, and *not* as either a professional under section 203(b)(3) or an advanced degree professional under section 203(b)(2) of the Act. *Id.*

Mr. discusses Carnegie Units and Indian degrees at length. The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject.[9] For example, 120 hours of classroom time was determined to be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school.[10] This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class. The Carnegie Unit does not apply to higher education.[11] Ultimately, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees.

The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. , "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf, accessed July 15, 2012 and incorporated into the record of proceedings, provides that the Indian system is not based on credits, but is exam-based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

also relies on an article he coauthored with The record contains no evidence that this article was published in a peer-reviewed publication or anywhere other than the Internet. The article includes British colleges that accept three-year degrees for admission to graduate school but concedes that "a number of other universities" would not accept three-year degrees for admission

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[9] The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose motivation is "improving teaching and learning." *See* http://www.carnegiefoundation.org/about-us/about-carnegie (accessed July 15, 2012).

[10] http://www.carnegiefoundation.org/faqs (accessed July 15, 2012).

[11] *See* http://www.suny.edu/facultysenate/TheCarnegieUnit.pdf (accessed July 15, 2012).

to graduate school. Similarly, the article lists some U.S. universities that accept three-year degrees for admission to graduate school but acknowledges that others do not. In fact, the article concedes:

> None of the members of who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so.
>
> In this process, we encountered a number of the objections to equivalency that have already been discussed.
>
> , commented thus:
>
> "Contrary to your statement, a degree from a three-year "Bologna Process" bachelor's degree program in Europe will NOT be accepted as a degree by the majority of universities in the United States. Similarly, the majority do not accept a bachelor's degree from a three-year program in India or any other country except England. England is a unique situation because of the specialized nature of Form VI."
>
> * * *
>
> , raise similar objections to those raised by
>
> "The Indian educational system, along with that of Canada and some other countries, generally adopted the UK-pattern 3-year degree. But the UK retained the important preliminary A level examinations. These examinations are used for advanced standing credit in the UK; we follow their lead, and use those examinations to constitute the an [*sic*] additional year of undergraduate study. The combination of these two entities is equivalent to a 4-year US Bachelor's degree.
>
> The Indian educational system dropped that advanced standing year. You enter a 3-year Indian degree program directly from Year 12 of your education. In the US, there are no degree programs entered from a stage lower than Year 12, and there are no 3-year degree programs. Without the additional advanced standing year, there's no equivalency."

Furthermore, these materials do not examine whether those few U.S. institutions that may accept a three-year degree for graduate admission do so on the condition that the holder of a three-year degree complete extra credits.

Finally, Mr. relies on a document of the United Nations Educational, Scientific, and Cultural Organization (UNESCO) entitled that was adopted by the General Conference of UNESCO in 1993. Paragraph 1(e) defines recognition as follows:

> "Recognition" of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State and deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

In fact, UNESCO's publication – (2d ed. 2004) – accessed on July 15, 2012 at http://unesdoc.unesco.org/images/0013/001388/138853E.pdf and incorporated into the record of proceedings), states as follows:

> Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exist a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.*
>
> Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. , and are developing criteria and mechanisms regarding the same.

Id. at 82. (Emphasis added.)

In support of the evaluations, claiming equivalency of an Indian bachelor's degree to a U.S. bachelor's degree, the petitioner submitted the

On page 11 of this document, it is acknowledged that 55 percent of all institutions in the United States do not accept three-year degrees from outside of Europe. The survey does not reflect how many of the institutions that do accept three-year degrees from outside of Europe do so provisionally. If the three-year Indian baccalaureate were truly a foreign equivalent degree to a U.S. baccalaureate, it can be expected that the vast majority of U.S. institutions would accept these degrees for graduate admission without condition.

The AAO has also reviewed AACRAO's Project for International Education Research (PIER) publications: the *P.I.E.R World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* (1997). The 1997 publication incorporates the first degree and education degree placements set forth in the 1986 publication. The *P.I.E.R World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* at 43. As with EDGE, these publications represent conclusions vetted by a team of experts rather than the opinion of an individual.

One of the PIER publications indicates that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. *A P.I.E.R. Workshop Report on South Asia* at 180 explicitly states that "transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year." The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate "may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis." This information seriously undermines the evaluations submitted by and , both of which attempt to assign credits hours for the beneficiary's three-year baccalaureate that are close to or beyond the 120 credits typically required for a U.S. baccalaureate.

Evaluations of a person's foreign education by credentials evaluation organizations are utilized by USCIS as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS need not accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *see also Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). For the myriad reasons discussed above, the AAO determines that the evaluations from have little probative value as evidence that the beneficiary's three-year Bachelor of Science degree from India is equivalent to a U.S. bachelor's degree.

Nor are the evaluations from Trustforte and ICETS any more persuasive. While the AAO agrees with the first part of these two evaluations – that the beneficiary's three-year computer science degree in India is comparable to three years of study at a U.S. college or university – the AAO does not agree with the second part of the respective evaluations – *i.e.*, that the credentials subsequently earned in the computer training programs of elevate the beneficiary's Indian education to the equivalent of a U.S. bachelor's degree in computer science. As previously discussed, the beneficiary must have a single foreign degree that is equivalent to a U.S. bachelor's degree to meet the definition of "advanced degree" in 8 C.F.R. § 204.5(k)(2), and to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act. The combination of a three-year university degree in India and a one-year diploma (or a diploma and a

certificate) from a technical training company in India, like , does not constitute a single foreign degree and is not equivalent to a U.S. bachelor's degree.

Counsel asserts that the Nebraska Service Center (NSC) confirmed in a liaison meeting with the Association of Immigration Lawyers of America (AILA) in April 2006 that it would accept three-year Indian baccalaureates as equivalent to U.S baccalaureate degrees if there was documentation showing that the coursework of the Indian program equated to a four-year U.S. degree. Contrary to counsel's implication, USCIS is not bound by the alleged "confirmation" in the NSC/AILA liaison meeting.

USCIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.") *See also* , Congressional Research Service (CRS) Memorandum, to the House Subcommittee on Immigration, Border Security, and Claims regarding "Questions on Internal Policy Memoranda issued by the Immigration and Naturalization Service," dated February 3, 2006. The memorandum addresses, "the specific questions you raised regarding the legal effect of internal policy memoranda issued by the former Immigration and Naturalization Service (INS) on current Department of Homeland Security (DHS) practices." The memo states that, "policy memoranda fall under the general category of nonlegislative rules and are, by definition, legally nonbinding because they are designed to 'inform rather than control.'" CRS at p.3 citing to *American Trucking Ass'n v. ICC*, 659 F.2d 452, 462 (5th Cir. 1981). *See also Pacific Gas & Electric Co. v. Federal Power Comm'n*, 506 F.2d 33 (D.C. Cir. 1974), "A general statement of policy . . . does not establish a binding norm. It is not finally determinative of the issues or rights to which it is addressed. The agency cannot apply or rely upon a general statement of policy as law because a general statement of policy announces what the agency seeks to establish as policy." The memo notes that "policy memoranda come in a variety of forms, including guidelines, manuals, memoranda, bulletins, opinion letters, and press releases.

In its consideration of the instant appeal, the AAO is bound by the Act, agency regulations, precedent decisions of the agency, and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). The AAO is not bound, therefore, by any oral or written "understandings" resulting from a liaison meeting between the NSC and AILA in 2006.

Based on the foregoing analysis, the AAO determines that the petitioner has failed to establish that the beneficiary has a foreign equivalent degree to a U.S. bachelor's degree in computer science. Thus, the beneficiary is not eligible for classification as an advanced degree professional under section 203(b)(2) of the Act.

Accordingly, the petition cannot be approved.

2. Is the Beneficiary Qualified for the Job Offered?

To be eligible for approval as an advanced degree professional, the beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Court of Appeals for the Ninth Circuit (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 [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] 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 INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F. 2d at 1309.

The key to determining the job qualifications is found in Part A, box 14 the Form ETA 750. This section of the labor certification application describes the minimum education, training, and experience required for the job offered. It is important that the application be read as a whole.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to

look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In this case, the labor certification specifies (Boxes 14 and 15 of the Form ETA 750) that the minimum education and experience required for the job is either (1) four years of college and a bachelor's degree "or equivalent" in computer science or a related field, plus five years of experience in the job offered or a related occupation, or (2) a master's degree in computer science or a related field, plus two years of experience in the job offered or a related occupation.

The beneficiary does not have a U.S. bachelor's degree or an equivalent foreign degree. Nor does he have a U.S. master's degree or an equivalent foreign degree. Thus, the beneficiary does not satisfy the minimum educational requirement of the labor certification to qualify for the proffered position.

For this reason as well, the petition cannot be approved.

Conclusion

The petition is deniable on two grounds:

1. The beneficiary does not have the requisite educational degree – at minimum, a U.S. bachelor's degree or a "foreign equivalent degree" – to be eligible for classification as an advanced degree professional under section 203(b)(2) of the Act.

2. The beneficiary does not qualify for the proffered position under the terms of the labor certification because he does not have the requisite educational degree – at minimum, a U.S. bachelor's degree or a foreign equivalent degree in computer science (or a related field) – as specified on the Form ETA 750.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition is denied.