U.S. Department of Homeland Security
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Washington, DC 20529

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U.S. Citizenship and Immigration Services

PUBLIC COPY

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 05 2008

LIN 06 189 51725

IN RE: Petitioner: [redacted]
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:

[redacted]

INSTRUCTIONS:

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

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a software development and information services company. It seeks to employ the beneficiary permanently in the United States as an application developer.[1] As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary held any single degree that is the equivalent of a U.S. bachelor's degree or a foreign equivalent degree. The director noted that the labor certification did not allow for the acceptance of educational equivalency consisting of a combination of multiple lesser degrees, educational experiences, and/or work experiences. 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 November 21, 2006 denial, the single issue in the current petition is whether the beneficiary is qualified to perform the duties of the proffered position.

Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. While no degree is required for this classification, the regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification must be accompanied by evidence that the beneficiary "meets the education, training or experience, *and any other requirements of the individual labor certification.*" (Emphasis added.) Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on October 21, 2003.

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[1] In his decision, the director identified the position as systems analyst; however, both the I-140 petition and the Form ETA 750 identify the proffered position as application developer.

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

On appeal, counsel submits a brief and a copy of *Grace Korean United Methodist Church v. Michael Chertoff,* 437 F. Supp.2d 1174 (D. Ore. Nov. 3, 2005).

With regard to the beneficiary's qualifications, with the initial I-140 petition, the petitioner submitted two letters of prior work experience from the beneficiary's former employers; and the following training documents:

> Certificate from Brainbench[3] dated May 25, 2000 that states the beneficiary is a certified Visual basic 6.0 programmer;
>
> Certificate from Brainbench dated March 31, 2000. This document states the beneficiary is a certified COBOL II programmer.
>
> Certificate from Brainbench dated March 30, 2000 that states the beneficiary is a certified Active Server Pages Programmer;
>
> Certificate from Brainbench dated October 30, 1999 that states the beneficiary is a certified Visual Basic Programmer; and
>
> A certificate from Tekmetrics[4] dated October 15, 1999 that states the beneficiary is a certified RDBMA developer;

The record also contains copies of the certificates of Microsoft computer training as listed below:

> A copy of a printout from Microsoft dated July 26, 2003 that states the beneficiary passed the Microsoft Certified Professional Exam;
>
> A copy of a printout entitled "Microsoft Certified Professional Transcript" that states that as of May 22, 2000 and May 26, 2000, the beneficiary had successfully completed Microsoft

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[2] 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).

[3] Brainbench describes itself as the world's largest provider of high quality, structured, skills certification exams on the Internet.

[4] Tekmetrics identifies itself as the world's largest provide of high-quality , structured, skilled certification exams on the Internet. Since the same individuals whose signatures are contained on the Tekmetrics have their signatures on the Brainbench certificates, it appears that Tekmetrics is either the precursor to Brainbench Internet computer certification company, or the two companies are operated by the same individuals .

certification exams on Designing and Implementing Distributed Applications with Microsoft Visual Basic 6.0, and Designing and Implementing Desktop Applications with Microsoft Visual Basic 6.0., respectively; and

A copy of a certificate of Achievement dated October 13, 1999 that states the beneficiary successfully completed the examination for Microsoft Office 2000 Channel Essentials.

With its I-140 petition, the petitioner also submitted a copy of an undated educational equivalency report written by [redacted] MEIS Services, Inc., Atlanta, Georgia. In his evaluation, [redacted] noted that the beneficiary was awarded a diploma in Leather Technology from the State Board of Technical Education, India in 1986, and stated that the beneficiary's studies were equivalent to a three-year program of academic studies in leather technology and transferable to an accredited U.S. university. [redacted] also stated that the beneficiary was awarded a diploma in computer science from Software Solution Integrated Ltd, India and a certificate in business computing from the Brilliant's Computer Centre, India in 1995.

[redacted] then enumerated the beneficiary's training and professional experience in technical managing, and software engineering, among other fields, over a ten-year period. [redacted] states that the beneficiary's years of progressively responsible experience in technical managing, hardware and software engineering were equivalent to or exceeding a three-year diploma of academic studies in software application and management from a U.S. college or university. [redacted] utilized the rule of three years of work experience to one year of university-level credits to reach his conclusion, and concluded that the beneficiary had a diploma in leather technology, a diploma in computer science, a certificate in business computing, and based on his work experience, over three years of academic studies in software applications and management. [redacted] determined that the beneficiary's education and professional experience were equivalent to an individual with a computer science and management degree[5] from an accredited U.S. university.[6]

The AAO notes that a previous petitioner had submitted an I-140 petition for the beneficiary with accompanying academic documentation and then subsequently withdrew its petition prior to adjudication. The regulation at 8 C.F.R. § 103.2(b)(15) allows us to consider the facts and circumstances surrounding the withdrawn petition. The previous petition with the accompanying academic and training documents is contained in the record. Thus the record contains documents with regard to the beneficiary's academic qualifications for the proffered position mentioned by Dr. Sambandham in his report but not submitted to the record by the petitioner with the instant petition. These documents include:

A copy of the beneficiary's Diploma of Licentiate in Leather Technology, from the State Board of Technical Education (SBTE) and Training, Andhra Pradesh, Hyderabad, India. The diploma states the beneficiary completed the seventh semester of a course described as a three and a half

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[5] [redacted] did not state the word "degree" in his evaluation, but within the context of his remarks, he appears to be saying the beneficiary's education and professional experience were equivalent to a U.S. baccalaureate in computer science and management.

[6] Although [redacted] stated that he used copies of the beneficiary's transcripts and degree certificate from the State Board of Technical Education, India issued in 1986, a diploma in computer science from the Software Solution Integrated ltd, India, and a certificate in business computing from the Brilliant's computer center, India in 1995 to make his determination, the petitioner did not submit any of the above-mentioned documents to the record with its initial I-140 petition.

year sandwich type diploma, and completed requirements for the diploma on December 31, 1986;

A copy of the beneficiary's Consolidated Statements of Marks for the third through the seventh semester of either studies or practicals training in the SBTE program;

A copy of a document entitled "Pass Certificate Cum Memorandum of Marks" that states the beneficiary passed an Intermediate Examination held in March 1983 and outlined the courses takes in Telugu, and in optional subjects of mathematics, physics theory, physics practicals, chemistry theory, and chemistry practicals;[7]

A copy of the beneficiary's Secondary School certificate that stated he passed an examination held on April 1981.

The previous petitioner also submitted copies of the following documents, not submitted by the instant petitioner:

A copy of a Certificate from Advanced Software Training Institute, Madras, India, dated March 15, 1993 that states the beneficiary received training in DOS and COBOL from January 2, 1993 to March 10, 1993;

A copy of a certificate for proficiency in business computer from Brilliant's Computer Centre, Madras, India dated June 15, 1995. This certificate states that the beneficiary attended a course of study from October 6, 1994 to May 1, 1995 and had been certified by examiners to have qualified for Second Division;

A copy of a letter written by [redacted], Training Coordinator, HTC Software Development Centre (P) Ltd., Chennai, India. The letter writer states that the beneficiary was trained in Real IBM Mainframe (e/390) for a period of ten days, or 60 hours, and the beneficiary was also trained the areas of JCL, VSAM, TSO-ISPF, CICS & DB2; and

A copy of a certificate from Vetri Software India, Ltd, that stated the beneficiary completed Y2K training as of December 31, 1997. The beneficiary's coursework was also listed and included JCL, TSO/ISPF, MVS, CICS, IMA and Y2K & Reverse Engineering.

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[7] For further information on this document, the AAO reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." AACRAO, http://www.aacrao.org/about/. According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. Authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at www.aacrao.org/publications/guide_to_creating_international_publications.pdf. According to EDGE, the beneficiary's Intermediate Examination certificate indicates education comparable to the attainment of a level of education comparable to completion of senior high school in the United States.

The record does not contain any other evidence relevant to the beneficiary's qualifications to perform the duties of the proffered position.

On appeal, counsel asserts that the petitioner in the Form ETA 750 required a bachelor's degree or equivalent and that the petitioner did not specify that the word equivalent meant a single degree. Counsel also notes that the petitioner's labor certification did not require any specific number of years for the petitioner's college education. Counsel states that the combination of lesser degrees, education and experience is an acceptable equivalent to a U.S. baccalaureate degree as required by the plain language of the petitioner's labor certification.

In his brief, counsel also states the evidence submitted to the record showed that the beneficiary had a combination of education, training and experience that was equivalent to a bachelor's degree in computer science, but that he did not have a single foreign degree equivalent to a U.S. bachelor's degree. Counsel states that the beneficiary met the qualifications of the labor certification that required only a "bachelor's degree or equivalent" and did not specify a particular limitation on what could be equivalent. Counsel also states that the beneficiary met the qualification of a skilled worker under 8 C.F.R. § 204.5(l) because the labor certification required two years of training or experience.

Counsel states that the word "equivalent" is not defined by the Department of Labor regulations nor by the ETA Form 750 instructions, and therefore, the word should be given its ordinary meanings as found in *Merriam – Webster's Collegiate Dictionary,* 423 (11Th Edition, 2005), namely "equal in force, amount, or value."

Counsel states that another context exits in which the word "equivalent" is used in connection with petitions for classification as a "skilled worker or professional." Counsel refers to 8 C.F.R. § 204.5(l) and states the regulatory definition of professional is an alien "who holds at least a United States baccalaureate degree or a foreign equivalent degree. Counsel notes that this definition is limited to the professional classification and does not include skilled worker. Counsel notes that the beneficiary would qualify as a skilled worker. Counsel notes that debate within the CIS as to the meaning of foreign equivalent degree is limited to the definition of professional within the context of this regulation and not to the definition of skilled worker.

Counsel reiterates that the plain language of the petitioner's labor certification "bachelors degree or equivalent" is not altered by any instruction, regulation, or statute to justify the director's statement that the labor certification does not allow for the acceptance of equivalent education qualifications as in the form of a combination of multiple lesser degrees, educational experiences, and/or work experience.

Counsel then states that, despite the director's conclusions, the petitioner's labor certification required a bachelors degree or equivalent, and not an equivalent degree; it allowed for the equivalent of a bachelor's degree without limitations, and, with regard to the combination of multiple lesser degrees, educational experiences, and/or work experience, the labor certification requires a bachelor's degree or equivalent and does not specify how that equivalence is to be determined.

Counsel also cites *Grace Korean United Methodist Church*, 437 F. Supp 2d at 1174. Counsel states that the court in this decision found Citizenship and Immigration Services' (CIS) position that the language "B.A. or equivalent" established a specific degree requirement to be untenable and that the beneficiary's combined education and experience satisfied the equivalency requirement in the petitioner's labor certification.

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).

On appeal, counsel refers to *Grace Korean United Methodist Church,* 437 F. Supp.2d at 1174, which finds that 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." We are familiar with this decision. We note that the AAO is not bound to follow the published decision of a United States district court, even in matters that arise in 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. We note that a subsequent decision in the same district, *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 *8-9 (D. Ore Nov. 30, 2006), found that experience was not equivalent to a degree, even in the skilled work context. *See also Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree).

At least two circuits, including the Ninth Circuit overseeing the Oregon District Court, have held that CIS does have the authority and expertise to evaluate whether the alien is qualified for the job. Those Circuit decisions are binding on this office and will be followed in this matter.

Relying in part on *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983), the Ninth Circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the 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, reached a similar decision in *Black Const. Corp. v. INS,* 746 F.2d 503, 504 (1984).

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). *See also Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C.Cir.1977), "there is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise . . . all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority."

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 accountant. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	Blank
	High School	Blank
	College	Blank
	College Degree Required	Bachelors or equivalent
	Major Field of Study	Computer science or engineering

The applicant must also have two years of experience in the job offered, or two years in the related occupation of programmer, developer or analyst. The duties of the proffered position are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A did not state any further special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, eliciting information about schools, colleges and universities attended, including trade or vocational training, the beneficiary stated he attended AP Government Institute, India, studying leather technology from July 1983 to December 1986, and received a diploma. The beneficiary also stated he attended Brilliant's Computer Centre, India, studying business computing, from October 1994 to May 1995, and received a certificate, and that he also attended Software Solution Integrated, Ltd, studying computer science from January 1997 to May 1997, and received a diploma.

In the instant case, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes an unspecified number of years of college, a bachelor's degree in computer or engineering, or an equivalent foreign degree in either field, and two years of work experience in the proffered position or in the related occupations of programmer, developer or analyst.

As correctly noted by counsel, 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.

The record contains an evaluation from [redacted], MIES, Inc., which states that admission to the State Board of Technical Education's diploma program requires only the equivalent of ten years of secondary education, not twelve. [redacted] concludes without explanation that the beneficiary has the

equivalent of more than three years of "academic studies in Leather Technology," which is transferable to an accredited U.S. college or university for an unspecified amount of credit. [redacted] further states that the beneficiary's ten years of progressively more responsible employment experiences and his professional experience were the equivalent of an individual with a computer science and management degree from an accredited U.S. university.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). CIS, however, is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

In the instant petition, [redacted]s evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*). Thus, [redacted]'s evaluation is given only limited weight in these proceedings. Further the beneficiary was required to have a bachelor's degree or equivalent in the fields of either computer science or engineering. The record reflects no university level studies in either field, based on the record as presently constituted. I[redacted] in his evaluation makes no determination that the AP Government Institute of Leather Technology is an accredited institution of higher education in India or that any of the Microsoft, Tekmetrics, Brainbench, Software Solution Integrated Limited, or Vetri training programs constituted university-level training in computer science or engineering. Moreover, as the equivalent of a U.S. high school diploma (twelve years of primary and secondary education) is not required for entry into the program, it is not clear that all of the diploma coursework is transferable as college or university credit. Thus, the beneficiary appears to have no university level studies in computer science or engineering, and his studies at the Government Institute of Leather Technology in Hyderabad, Andhra Pradesh have not been definitively established as university-level coursework.[8]

On appeal, counsel states that the proffered position is a skilled worker position. However, in the petitioner's cover letter, dated June 13, 2006, counsel stated that the beneficiary met the requirements of the labor certification that counsel described as a "bachelor's degree in computer science, engineering or related," and "two years in programming, development or analysis." Counsel made no reference to any equivalence to a bachelor's degree based solely on the beneficiary's informal studies in computer science and his work experience, nor did he request classification of the instant petition at the time of submission of the I-140 petition of skilled worker, a classification with minimum requirements of two years of relevant training. On appeal, counsel states that the application was filed as a skilled worker; however, the record does not further corroborate counsel's assertion. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19

[8] The AAO also notes that does not indicate how he arrived at his conclusion that three years of studies at the Andhra Pradesh Government Institute of Leather Technology Hyderabad was the equivalent of three years of university-level education in leather technology in the United States. The AAO consulted the website for the Indian Government National Board of Accreditation at http://www.nba-aicte.ernet.in/consolidated/Andhra Pradesh.doc (accessed on July 23, 2008). The beneficiary's school listed on his diploma, namely, the Government Institute of Leather Technology Hyderabad, is not in the NBA list of accredited technical institutions in Andhra Pradesh.

I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

Based on the labor certification, DOL assigned the occupational code of 030-162.014, programmer analyst or systems analyst, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at http://online.onetcenter.org/crosswalk/DOT?s=030.162-014+&g+Go (accessed July 22, 2008) and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." 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 proffered position requires a bachelor's degree in computer science or engineering or an equivalent foreign degree, and two years of experience in the proffered position or two years of work experience in the related occupation of programmer, developer or analyst. Based on the above, the position could be considered under the skilled worker classification or as a professional position.

The regulations define a third preference category "professional" as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." *See* 8 C.F.R. § 204.5(l)(2). The regulation uses a *singular* description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes. The petitioner must not only prove statutory and regulatory eligibility under the category sought, but must *also* prove that the sponsored beneficiary meets the requirements of the proffered position as set forth on the labor certification application. In the instant petition, the Form ETA 750 stipulates a bachelor degree or equivalent.

Moreover, 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." (Emphasis added.) Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement in of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has

broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that member of the profession must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential.

The petitioner has not demonstrated that the beneficiary's diploma was awarded by a college or university. Thus, even we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate, we could not consider the beneficiary's postgraduate diploma as education towards such a degree.

On appeal, counsel states that DOL provides no regulatory guidance to petitioner with regard to the use of the word "equivalent," and therefore the ordinary meaning of the word should be used. The AAO notes that DOL has provided the following field guidance with regard to the issue of equivalent education. "When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the ETA 750, Part A as well as throughout all phase of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." *See* Memo. from [redacted], Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [Citizenship and Immigration Services (CIS)] to accept the employer's definition" and SESAs should "request the employer provide the specifics of what is meant when the word 'equivalent' is used." *See* Ltr. From [redacted] Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to [redacted] Jackson & Hertogs (March 9, 1993). DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree." *See* Ltr. From [redacted]n, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to [redacted] INS (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.

Even if this DOL field guidance were not persuasive, we are satisfied that the plain language of the labor certification is not consistent with an intent to consider experience equivalent to a degree. The labor certification allows an employer to require a specific amount of experience within a box separate from education. Box 15 allows the employer to list any other special requirements. The petitioner listed "bachelor's or equivalent" within the "College Degree Required" box. The petitioner then indicated that two years of experience was required in the job offered or a related occupation. The petitioner did not clarify "equivalent," a term it used in the "College Degree Required" box, within box 15. We are satisfied that the most reasonable interpretation of the petitioner's use of "bachelor's or equivalent" in the "College Degree Required" box is equivalent *education*. *See Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 at *8-9; *Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) (D.C. Cir. March 26, 2008).

Both regulatory provisions governing the two third preference visa categories clearly require that the petitioner submit evidence of the beneficiary's bachelor's degree or foreign equivalent – for a "professional" because the regulation requires it and for a "skilled worker" because the regulation requires that the beneficiary qualify according to the terms of the labor certification application in addition to proving a minimum of two years of employment experience.

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any

other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory provision. And for the "professional category," the beneficiary must also show evidence of a "United States baccalaureate degree or a foreign equivalent degree."

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a "skilled worker," the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree or equivalent foreign degree. The petitioner simply cannot qualify the beneficiary as a skilled worker without proving the beneficiary meets its additional requirement on the Form ETA-750 of an equivalent foreign degree to a U.S. bachelor's degree.[9]

The beneficiary was required to have a bachelor's degree or equivalent in computer science and engineering on the Form ETA 750. Based on the beneficiary's educational documentation, namely, his diploma from the three and a half year course in Leather Technology from the AP Technical Institute, the beneficiary does not have a bachelor degree in computer science or engineering. the fields stipulated on the Form ETA 750. Thus, the petitioner has not met its burden. The appeal is dismissed.

ORDER: The appeal is dismissed.

[9] Under the skilled worker classification, the petitioner would also have to establish that the beneficiary had two years of relevant experience. The record, based on various letters of work verification, establishes the beneficiary's requisite two years of work experience. The AAO also notes that the pertinent regulations that state a degree is a single degree do not refer to the skilled worker classification, and therefore, a petitioner could establish a beneficiary's qualifications as a skilled worker based on a degree that combined various lesser degrees. However, in the instant petition, based on the record, the beneficiary has no university-level studies or lesser university degree in computer science or engineering.