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

U.S. Citizenship
and Immigration
Services

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[redacted]

FILE: LIN-06-077-53009 Office: NEBRASKA SERVICE CENTER Date: AUG 26 2008

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[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 ("director"), denied the employment-based immigrant visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office ("AAO"). The appeal will be dismissed.

The petitioner's business relates to software development and consulting. The petitioner seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, the petition filed was submitted with Form ETA 9089, Application for Permanent Employment Certification,[1] 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 based on a single program of study to meet the professional category.

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).[2]

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 pursuant to Section 203(b)(3)(A) of the Immigration and Nationality Act (the Act) as a professional or skilled worker. The regulation at 8 C.F.R. § 204.5(l)(2) 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 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.

The petitioner must establish that its Form ETA 9089 job offer to the beneficiary is a realistic one. A petitioner's filing of an ETA 9089 labor certification application establishes a priority date for any immigrant petition later filed based on the approved ETA 9089. The priority date is the date that Form ETA 9089 Application for Permanent Employment Certification was accepted for processing by any regional processing center 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

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[1] On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA-9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

[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).

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).

Here, the Form ETA 9089 was accepted for processing by the relevant office within the DOL employment system on July 19, 2005. DOL certified Form ETA 9089 on October 25, 2005. The petitioner filed Form I-140 on January 17, 2006.

On March 9, 2006, 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 the required Bachelor's degree or foreign equivalent degree in Computer Science based on one program of study as required by the certified labor certification. Accordingly, the director found that the beneficiary did not meet the definition of a professional. The petitioner appealed to the AAO.

On April 8, 2008, the AAO director issued a Request for Additional Evidence ("RFE"), which requested that the petitioner provide a copy of the recruitment file submitted to DOL in order to determine how the petitioner described the position offered to the public in its labor certification advertisements. Additionally, the AAO RFE requested that the petitioner provide evidence that it had the ability to pay all the I-140 beneficiaries that it had sponsored. Further, the AAO RFE requested that the petitioner provide evidence to demonstrate that the beneficiary met the experience requirements of the certified labor certification. The petitioner did not respond. This alone is a sufficient basis for denial. 8 C.F.R. § 103.2(b)(13).

On appeal, the petitioner contends that the beneficiary qualifies for the position offered as the beneficiary has the required education based on a combination of educational studies.

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 bachelor's degree, and three years of prior experience. Because of those requirements, the proffered position is for a professional, but might also be considered under the skilled worker category. If considered under the skilled worker category, the petitioner would need to demonstrate that the petition meets the requirements of that category.

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-
>
> > (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).[3] 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.
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> * * *
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> 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).

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

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[3] Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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.

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.

(Emphasis added.)

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.

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

The beneficiary in this matter possesses a Bachelor of Arts degree in Sociology based on three years of study as well as completing a "Master's Diploma in Software Engineering" requiring two years of coursework. He additionally has computer related work experience. Thus, the issues are whether the beneficiary's three-year diploma is equivalent to a U.S. baccalaureate degree in computer science, math, business or engineering, or, if not, whether it is appropriate to consider the beneficiary's other education and work experience in addition to his initial degree. We must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

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) as a professional of the Act as he does not have the minimum level of education required for the equivalent of a bachelor's degree.

DOL assigned the Dictionary of Occupational Title ("DOT") occupational code of 030.062-010 (O*Net code: 15-1032.00), "Software Engineer," to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database, O*Net, 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/15-1032.00#JobZone (accessed August 20, 2008).[4] 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 petition is also not approvable for a third preference immigrant visa under the skilled worker category. A beneficiary is required to document prior experience in accordance with 8 C.F.R. § 204.5(l)(3)(ii)(B), which provides:

> *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.

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[4] DOL previously used the DOT to determine the skill level required for a position. The DOT was replaced by O*Net. Under the DOT code, the position of software engineer has a SVP of 8 allowing for four or more years of experience.

Authority to Evaluate Whether the Alien is Qualified for the Job Offered

Relying in part on *Madany*, 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 (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)(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 (9th Cir. 1984).

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff,* 437 F. Supp. 2d 1174 (D. Or. 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.

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff,* 2006 WL 3491005 (D. Or. 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 rejected the proposition that CIS does not have the authority to consider whether the beneficiary is qualified for the certified job. *Id.* at *5. The court then 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. *Id.* at *8. 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 although the court rejected the argument that experience was equivalent to education. *Id.* at *8-9. 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. *Id.* at *9-10.

The key to determining the job qualifications is found on Form ETA 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA-9089 be read as a whole. The instructions for the Form ETA 9089, Part H, provide:

> 4. Select the minimum education required to adequately perform the duties of the job being offered.
>
> 5. Select Yes or No to identify whether or not training is required for the job. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. 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 9089, the "job offer" position description for a Software Engineer provides:

> Analyze, design, develop, implement and integrate computer software products using Oracle, UNIX Shell scripting, Manugistics Supply Chain Management Software Suite, Webconnect and BEA WebLogic.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part H of the labor certification reflects the following requirements:

H.4. Education: Minimum level required: Bachelor's degree

4-A. Provides "if other indicated in question 4 [in relation to the minimum education], specify the education required."

The petitioner left this blank.

4-B. Major Field Study: Computer Science.

7. Is there an alternate field of study that is acceptable?

The petitioner indicated Math, Business or Engineering as alternate fields of study.

8. Is there an alternate combination of education and experience that is acceptable?

The petitioner checked "no" to this question.

8-A. If yes, specify the alternate level of education required:

Nothing was listed, as the petitioner checked no for question H.8.

8-B. If Other is listed in question 8-A [in relation to alternate combination and experience], indicate the alternate level of education required.

Nothing was listed as the petitioner checked no to H.8.

9. Is a foreign educational equivalent acceptable?

The petitioner listed "yes" that a foreign educational equivalent would be accepted.

6. Experience: 36 months (3 years) in the position offered, as a Software Engineer,
10. or 36 months (3 years) in the related occupation of "any computer related experience."

14. Specific skills or other requirements: 3 years experience in using Oracle, UNIX Shell scripting, Manugistics Supply Chain Management Software Suite, Webconnect and BEA WebLogic.

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 9089, signed by the beneficiary, the beneficiary listed his highest level of achieved education related to the requested occupation as "Bachelor's degree in Computer Science." He listed the institution of study where that education was obtained as the University of Mumbai, Mumbai, Maharashtra, India, and the year completed as 1998.

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 One:

Evaluation: The Trusteforte Corporation, New York, New York.

- The evaluation considered the beneficiary's Bachelor of Arts degree completed in 1998 at the University of Mumbai. He completed both general studies, and specialized studies in his area of concentration: Sociology, and related subjects.

- The evaluator concluded that the beneficiary's studies were equivalent to three years of academic studies from an accredited institution of higher education in the United States.
- The beneficiary additionally completed "bachelor's level academic studies" in computer science at Aptech Computer Education in India.
- The evaluator states that admission is based on the completion of secondary level studies and competitive entrance exams.
- At Aptech, the beneficiary completed two years of studies with coursework including object-oriented analysis and design, software engineering, software project management computer networks, database management, and other subjects. He completed his studies in 1996 and received a Master's Diploma in Software Engineering.
- The evaluator concluded that based on the nature of the courses completed and credit hours involved in both programs of studies combined, that the beneficiary "satisfied substantially similar requirements to the completion of academic studies leading to a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States."

The director denied the petition as the evaluation relied on a combination of education, and the petitioner did not demonstrate that the beneficiary had one degree leading to a bachelor's degree as required by the terms of the labor certification.

The petitioner provided a second evaluation on appeal:

Evaluation Two:

- Evaluation: Medgar Evers College of the City University of New York, School of Business, Brooklyn, New York.
- The evaluator opined that he thought the June 20, 2001 evaluation completed by Trustforte was accurate.
- The evaluator considered that the beneficiary completed a three-year Bachelor of Arts program at the University of Mumbai, and a six-semester program in Software Engineering at Aptech Computer Education for which he received a Master's Diploma in Software Engineering.
- The evaluator states that academic classes offered at Aptech are "analogous in content and duration to classes offered in bachelor's level programs at US universities." Further, the evaluator opines that, "it is incontrovertible that the completion of the six-semester program at Aptech Computer Education is equivalent to the fulfillment of a bachelor's level major concentration in Computer Science."
- The evaluator notes that, "the June 20, 2001 [Trustforte] evaluation did not equate the "Master's Diploma program in Software Engineering at Aptech Computer Education to a master's degree at a US educational institution. Rather, the Evaluation determined that the completion by the candidate of the "Master's' Diploma program in Software Engineering was indicative of the fulfillment of a bachelor's level major in the field of Computer Science."
- By completing both programs of study, the beneficiary completed five years of bachelor's level academic studies with a concentration in Computer Science. Therefore, the evaluator's opinion was that the beneficiary "gained a level of academic competence equivalent to a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States."

The evaluation similarly relies on the two programs of study combined. Neither program of study individually is equivalent to a U.S. Bachelor's degree.

As stated in our Request for Evidence, in determining whether the beneficiary's diploma is a foreign equivalent degree, we have 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, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, http://aacraoedge.aacrao.org/register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

EDGE provides that a Bachelor of Arts/Bachelor of Commerce/Bachelor of Science degree awarded in India represents the attainment of a level of education comparable to two or three years of university study in the United States. The record contains the beneficiary's yearly statement of marks and show that the beneficiary's studies were based on three years of study.
EDGE does provide that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

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

The beneficiary completed his studies at Aptech Computer Education, Borivli, India, in the state of Maharashtra. His studies at Aptech were completed prior to the beneficiary's three-year bachelor of arts program, so that the beneficiary did not complete a "Master's degree," which would have an equivalence level in the U.S. EDGE does not provide the equivalence of a "Master's in Software Engineering." Based on a review of the All India Council for Technical Education http://www.nba-aicte.ernet.in/nmna.htm site, accessed on March 10, 2008, however, APTECH, Borivli, India, is not an accredited institution within the state of Maharashtra, India. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). As the petitioner did not respond to our notice, it has not overcome the inconsistencies between the evaluations of record and the EDGE materials. Neither, the beneficiary's bachelor's degree, or his "Master's diploma" would be equivalent to a bachelor's degree individually.

On appeal, counsel argues that the beneficiary qualifies for the position as he has the equivalent of a bachelor's degree based on the combination of his Bachelor of Arts degree, and Master's Diploma in Software Engineering.

Counsel cites to a January 7, 2003 letter from Efren Hernandez III of the INS Office of Adjudications to counsel in another case, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2).

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi,* 22 I&N 169,

196-197 (Comm. 1968); *see also,* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).[5]

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in Mr. Hernandez' correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. We do not find the determination of the credentials evaluation probative in this matter. Again *Matter of Shah,* 17 I&N Dec. 244, generally provides that a bachelor's degree requires four years of education.

Counsel cites to *Grace Korean*, 437 F. Supp. 2d at 1174, which we have addressed above. Counsel specifically cites language from *Grace* Korean that CIS's determination that the beneficiary did not have the required "singular degree" was "arbitrary, capricious and an abuse of discretion."

We note that *Grace Korean* was decided based on a labor certification filed in 1996, which would have used a different, prior Form ETA. That form did not address the issue of alternate combinations of education and/or experience. The new form, Form ETA 9089, has been revised and now specifically allows the petitioner to address what level of alternate education that the petitioner requires. The petitioner did not list that it would accept any alternate combinations of education, provide that it would accept a degree based on equivalency, or attempt to define equivalent as the form allows. Therefore, we find counsel's reliance on *Grace Korean* inapplicable to the present situation.

Counsel asserts that the director's final basis for denying the petition was that "you questioned the ability of Aptech Computer Education to issue a Master's Degree on par with an American University." She cites to the "expert letter" provided by [redacted], which states that Aptech is "an internationally renowned institution" and that its "classes completed . . . are analogous in content and duration to classes offered in bachelor's level programs at US universities." Further, counsel cites to the Trustforte evaluation regarding the beneficiary's Aptech studies that states, "the nature of the courses and the credit hours involved, considered together with his baccalaureate-level studies, indicate that he satisfied substantially similar requirements to the completion of academic studies leading to a Bachelor of Science degree in Computer Science from an accredited institution of higher education."

As noted above, the beneficiary completed his Aptech "Master's Diploma" prior to his three year bachelor's degree. Neither evaluation equates this degree to a Master's degree. The "expert letter" specifically notes that the Trustforte evaluation does not assert the studies are Master's level, but would be baccalaureate level. As such, the studies would not individually demonstrate that the beneficiary has a bachelor's degree, and only

[5] While 8 C.F.R. § 103.3(c) provides that precedent decisions of Citizenship and Immigration Services (CIS), formerly the Service or INS, are binding on all CIS employees in the administration of the Act, unpublished decisions, and letters are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

are considered in combination with the beneficiary's three-year degree. Neither program individually would demonstrate that the beneficiary had a bachelor's degree based on one program of study.

Counsel asserts that the beneficiary "received his H1b visa (sic) from your service center for the computer professional position of Sr. Software Engineer/Analyst based on this evaluation."

8 CFR § 214.2(h)(4)(iii)(D)(*5*) allows for the combination of education with experience to meet the degree standard. Therefore, the evaluation, which the petitioner provided might be acceptable for a non-immigrant H-1B petition, but not for an immigrant visa petition. Further, the specific issue in the matter before us is how Form ETA 9089 was drafted. The petitioner did not draft the form to allow for any alternate combinations of education and/or experience.

Further, even if we considered the petition under the skilled worker category, the beneficiary would not meet the requirements of the certified ETA 9089. The beneficiary's combined programs of study and experience would be "the equivalent of a degree," rather than a "foreign equivalent degree." Form ETA 9089 allows space for a petitioner to list an "alternate level of education." The petitioner could have selected "other" and specified that the petitioner would accept a combination of education, which was evaluated as the equivalent of a bachelor's degree. The petitioner, here, did not specify that it would accept anything other than a "Bachelor's degree." Therefore, the beneficiary cannot qualify as a skilled worker based on the certified ETA 9089.

Once again, we are cognizant of the recent holding in *Grace Korean*, which held that CIS is bound by the employer's definition of "bachelor or equivalent." In reaching this decision, the court concluded that the employer in that case tailored the job requirements to the employee and that DOL would have considered the beneficiary's credentials in evaluating the job requirements listed on the labor certification. Significantly, *Snapnames.com, Inc.,* arising in the same district as *Grace Korean* after that decision was issued, held that DOL certification does not preclude CIS from considering whether the alien meets the educational requirements specified in the labor certification. *Snapnames.com, Inc.*, 2006 WL 3491005 at *5. The court acknowledged the decision in *Grace Korean* and then stated:

> Here, SnapNames also filled out the labor certification with Mr. Agarwal in mind. However, CIS has an independent role in determining whether the alien meets the labor certification requirements, and where the plain language of those requirements does not support the petitioner's asserted intent, the agency does not err in applying the requirements as written. In fact, the agency is obligated to "examine the job offer *exactly as it is completed* by the prospective employer." *Rosedale & Linden Park Co.,* 595 F. Supp. at 833 (emphasis added).

The petitioner in the case at hand did not list "or equivalent," only that the beneficiary must have a bachelor's degree.

As discussed above, the role of the DOL in the employment-based immigration process is to make two determinations: (i) that there are not sufficient U.S. workers who are able, willing, qualified and available to do the job in question at the time of application for labor certification and in the place where the alien is to perform the job, and (ii) that the employment of such alien will not adversely affect the wages and working conditions of similarly employed U.S. workers. Section 212(a)(5)(A)(i) of the Act. Beyond this, Congress did not intend DOL to have primary authority to make any other determinations in the immigrant petition process. *Madany*, 696 F.2d at 1013. As discussed above, CIS, not DOL, has final authority with regard to determining an alien's qualifications for an immigrant preference status. *K.R.K Irvine*, 699 F.2d at 1009 FN5

(*citing Madany*, 696 F.2d at 1011-13). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by DOL. *Id.*

Significantly, when DOL raises the issue of the alien's qualifications, it is to question whether the Form ETA-750 properly represents the job qualifications for the position offered. DOL is not reaching a decision as to whether the alien is qualified for the job specified on the Form ETA 750, a determination reserved to CIS for the reasons discussed above. Thus, DOL's certification of an application for labor certification does not bind us in determinations of whether the alien is qualified for the job specified. As quoted above, DOL has conceded as much in an amicus brief filed with a federal court.

Finally, where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, CIS must examine "the language of the labor certification job requirements" in order to determine what the petition beneficiary must demonstrate to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which CIS 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." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). CIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). CIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Related to these issues, is the question of how was the position's actual minimum requirements were expressed to DOL, advertised to U.S. workers, and would a U.S. worker with the equivalency of a degree have known that his or her combination of education and experience would qualify them for the position. The AAO issued an RFE to determine how the minimum requirements were expressed to U.S. workers. The petitioner failed to respond to the RFE. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). Accordingly, the petitioner has not demonstrated that it adequately expressed its intent that it would accept the equivalent of a bachelor's degree.

The beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act. In addition, the beneficiary does not meet the job requirements on the labor certification. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

Further, although not raised in the director's decision, the petition should have been denied as the petitioner failed to demonstrate that the beneficiary had the required skills to meet the terms of the certified labor certification. The petitioner also failed to establish that it had the ability to pay the beneficiary the proffered wage. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd.* 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

The AAO's April 8, 2008 RFE requested that the petitioner provide evidence that the beneficiary had the required 3 years experience specifically in using Manugistics Supply Chain Management Software Suite as required on Form ETA 9089, Part H, 14. The petitioner failed to respond. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

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

The Form ETA 9089 job offer states that the position requires three years of experience in the job offered, or three years in a related computer position. The job offer also requires three years experience in using Oracle, UNIX Shell scripting, Manugistics Supply Chain Management Software Suite, Webconnect and BEA WebLogic.

On the Form ETA 9089, Part K, Alien Work Experience, the beneficiary listed his prior work experience as follows: (1) for the petitioner, February 2005 to present, Senior Software Engineer; (2) for CMC Americas Inc., Baton Rouge, Louisiana, from March 1, 2004 to January 31, 2005, Software Engineer; and (3) for Datamatics America Inc., Edison, New Jersey, December 1, 2001 to February 28, 2004, Senior Software Analyst.

For the individual beneficiary to qualify for the certified labor certification position, the petitioner must demonstrate that the beneficiary's prior experience qualifies the individual for that position, and that the beneficiary obtained the experience by the time of the priority date. Evidence must be 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.

As evidence to document the beneficiary's qualifications, the petitioner submitted the following letters:

> Letter from [redacted], General Manager, Datamatics (America) Inc., dated November 1, 2005;
> Dates of employment: December 2001 to February 2004, full-time;
> Title: "Senior Software Analyst;"
> Job Duties: "In his capacity, his job duties were as follows: Analyze, design, develop, implement and integrate computer software products using Oracle, UNIX Shell scripting, Manugistics Supply Chain Management Software Suite, NetWorks Transport, Freight Pay, Collaborate, HP-UX, Oracle, PERL, WebWORKS Foundation, BEA WebLogic, Autosys, PERL, XML, Connect Direct, FTP eXchange, SAP/R3 RFC Connectors, MS Visio."
>
> Letter from [redacted], Vice President Administration and Finance, CMC Americas, dated December 2, 2005;
> Dates of employment: March 26, 2004 to January 31, 2005;
> Title: "Software Engineer;"
> Job Duties: "In his capacity, his job duties were as follows: to analyze, design, develop, implement and integrate computer software products using NetWorks Transport, Freight Pay, Collaborate, HP-UX, Oracle, PERL, WebWORKS Foundation, BEA WebLogic, Autosys, PERL, XML, Connect Direct, FTP eXchange, SAP/R3 RFC Connectors, MS Visio."

While the letters demonstrate that the beneficiary has the required three years of experience in either the position offered, or the alternate related occupation, the petitioner has failed to document that the beneficiary has all the required specific skills as elaborated in H.14. Specifically, the petitioner only documented that the beneficiary had slightly over two years, and not the required three years, in Manugistics Supply Chain Management Software Suite. The petitioner was afforded an opportunity to address this issue, but failed to respond to the AAO's RFE. Accordingly, the petitioner failed to document that the beneficiary had all the required experience for the position offered.

Additionally, the petitioner failed to demonstrate that it had the ability to pay the beneficiary the proffered wage. The AAO's April 8, 2008 RFE requested that the petitioner provide the beneficiary's W-2 statements, including 2005, 2006 and 2007. The RFE also requested that the petitioner submit its 2005, and 2006 federal tax returns, as well as its 2007 return, if available, annual reports, or audited financial statements to demonstrate its ability to pay. The petitioner failed to respond. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *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 either be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate its continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. *See* 8 CFR § 204.5(d). The priority date in the instant petition is July 19, 2005. The proffered wage listed on Form ETA 9089 is $72,000 per year. The petitioner listed the following information on Form I-140: established: 2001; gross annual income: $138,750; net annual income: not listed; and current number of employees: two.

First, in determining the petitioner's ability to pay the proffered wage during a given period, CIS will examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. On Form ETA 9089, signed by the beneficiary on December 30, 2005, the beneficiary listed that he has been employed with the petitioner since February 1, 2005.

The petitioner did not provide any W-2 statements, or copies of pay records to show that it could pay the beneficiary the proffered wage.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's federal income tax return. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well supported by federal case law. *See Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now CIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

The record demonstrates that the petitioner is an S corporation. Where an S corporation's income is exclusively from a trade or business, CIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's Form 1120S. The instructions on the Form 1120S, U.S. Income Tax Return for an S Corporation, state on page one, "Caution, include only trade or business income and expenses on lines 1a through 21." Where an S corporation has income from sources other than from a trade or business, net income is found on Schedule K. The Schedule K form related to the Form 1120 states that an S corporation's total income from its various sources are to be shown not on page one of the Form 1120S, but on lines 1 through 6 of the Schedule K, Shareholders' Shares of Income, Credits, Deductions, etc. *See* Internal Revenue Service, Instructions for Form 1120S, 2003, at http://www.irsgov/pub/irs-03/i1120s.pdf, Instructions for Form 1120S, 2002, at http://www.irs.gov/pub/irs-02/i1120s.pdf, (accessed February 15, 2005). The petitioner does not list additional income on Schedule K so we will take the petitioner's net income from line 21:

Tax year	**Net income or (loss)**
2005[6]	not provided
2004	$32,590

[6] Based on the date of filing, the petitioner's 2005 tax return would likely not have been available.

As the petition's priority date is July 19, 2005, the petitioner's 2004 federal tax return would not be used to demonstrate the petitioner's ability to pay, but would be considered generally. In viewing the petitioner's federal tax return generally, the return would show insufficient income to pay the beneficiary's proffered wage. Additionally, we note that the petitioner's 2004 total gross receipts were only $111,222, which are not much higher than the beneficiary's proffered wage.

We also note that CIS records show that the petitioner has filed a number of other I-140 petitions. Where a petitioner has filed multiple petitions for multiple beneficiaries, the petitioner must demonstrate that its job offers to each beneficiary are realistic, and that it has the ability to pay the proffered wages to each beneficiary where a petition is pending. The petitioner must demonstrate this for each beneficiary as of the priority date of each petition and continuing until each beneficiary obtains lawful permanent residence. *See Mater of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). The petitioner failed to provide evidence as requested that it had established the ability to pay for each sponsored beneficiary.[7]

Further, the petitioner cannot demonstrate its continuing ability to pay the required wage under a second test used based on an examination of net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.[8] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's net current assets were as follows:

Year	Net current assets
2005	not provided
2004	$37,964

The petitioner's net current assets would not allow for payment of the proffered wage.

As noted above, the petitioner failed to provide further evidence in response to the RFE to show that it could pay the proffered wage for the instant beneficiary, or for all the Form I-140 beneficiaries that the petitioner has sponsored. Accordingly, the petitioner has failed to demonstrate its ability to pay the proffered wage.

Based on the foregoing, the petitioner failed to establish that the beneficiary met the qualifications of the certified labor certification. The petitioner additionally failed to demonstrate that it could pay the beneficiary the proffered wage. Accordingly, the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of

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[7] Further, CIS records reflect that the petitioner has filed for a number of H-1B workers. The exact amount of currently employed H-1B workers is unclear. The petitioner would be obligated to pay each H-1B petition beneficiary the prevailing wage in accordance with DOL regulations, and the labor condition application certified with each H-1B petition. *See* 20 C.F.R. § 655.715.

[8] According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

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 not been met.

ORDER: The appeal is dismissed.