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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: EAC 06 100 52501 Office: NEBRASKA SERVICE CENTER Date: JUL 28 2008

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

The petitioner is an automobile insurance company. It seeks to employ the beneficiary permanently in the United States as a programmer/analyst. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position because the beneficiary's three year-baccalaureate degree in biology combined with postgraduate studies and a certificate in computer applications did not meet the educational requirement stipulated in the ETA Form 750. 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 September 21, 2006 denial, the single issue in the current petition is whether the beneficiary is qualified to perform the duties of the proffered position. For the reasons discussed below, we concur with the director that the beneficiary does not meet the degree in a specific field requirement certified by DOL.

In the cover letter accompanying the instant petition, the petitioner identified the beneficiary's classification as a professional based on the duties of the position and based on the Department of Labor Standard Occupational Classification (SOC) code of 15-1051.[1] 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. Evident 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 November 26, 2001.

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).

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[1] The ETA Form 750 indicates the DOL assigned an occupational code of 030.162.014, Programmer Analyst, to the position.

The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

On appeal, counsel submits copies of the petitioner's recruitment advertisements from the *Washington Post*, from March, May, June and September 2001; internet job postings from the petitioner's "Career Center" website, from WashingtonJobs.com website posted in September 2001, and from dice.com website. Counsel also submits a copy of a Reduction in Recruitment Employment Opportunity Notice for the proffered position. Counsel also submits copies of ten Forms ETA 750 for the petitioner's other proffered positions of programmer analyst, senior programmer analyst, and Smalltalk Developer; and one copy of a Form 9089 Application for Permanent Employment Certification[3] for the position of Senior ETL Architect. Finally counsel submits a document entitled "Addendum 1: Summary of Recruitment Results." The document lists candidates ostensibly interviewed by the petitioner from May 22, 2001 to September 25, 2001, and identifies the source of their recruitment, the outcome of any interviews or contacts with the petitioner, as well as comments on each applicant. The comments section indicates that seven applicants from the list were hired.[4]

Counsel also resubmits documentation submitted in the petitioner's response to the director's request for further evidence dated July 12, 2006. This documentation includes copies of correspondence between Aron Finkelstein, attorney at law, and [redacted], Director, Business and Trade Services, Citizenship and Immigration Services (CIS), dated December 27, 2002 and January 7, 2003, respectively. The record also contains excerpts from an Internet website that explained the Department of Electronics Accreditation of Computer Courses (DOEACC) educational scheme for computer training in India through non-formal computer training institutes, one of which is the Skiltek program in Cochi, (Kerala), India.

In addition, the record contains a copy of the beneficiary's diploma from Mahatma Ghandi University, in Kottayam, India for a three-year Bachelor of Science program in which the beneficiary majored in botany, with subsidiary studies in chemistry and zoology; a copy of a certificate from the Computer Society of India on behalf of All India Council of Technical Education (AICTE), and the Department of Electronics Government of India for the beneficiary's qualifying in all four modules of the Department of Electronics Accreditation of Computer Courses (DOEACC) "O" level examination in July 1993;[5] and a copy of the beneficiary's Postgraduate Diploma in Computer Applications from Skiltek Computer Centre, Cochin, India, dated October 15, 1993, with an accompanying Statement of Marks for the September 1992 to August 1993 period of enrollment.

Finally, the record contains an educational equivalency evaluation written by [redacted], The Trustforte Corporation, New York, New York. In his evaluation, [redacted] stated that the beneficiary's coursework and her diploma from Mahatma Gandhi University established that the beneficiary completed three years of academic studies leading to a Bachelor of Science degree, with a major in Biology from an

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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] The successor document to the ETA Form 750 for applications for labor certifications submitted after March 28, 2005.

[4] The predominant reason for not hiring these individuals was noted as "insufficient experience." This report does not indicate the educational background or credentials of any applicants.

[5] The record also contains a document dated September 1993 that provides the overall results of the beneficiary's studies for the DOEACC "O" level examination.

Accredited U.S. institution of higher education. [redacted] then examined the beneficiary's studies at the DOEACC "O" level program and with the Skiltek Computer Centre, and determined that the foregoing courses were analogous in content, difficulty, and duration to classes offered in bachelor's level programs at U.S. universities. [redacted] then determined that the beneficiary's coursework at DOEACC and Skiltek, combined with her prior baccalaureate studies, indicated that she had satisfied substantially similar requirements for the completion of academic studies leading to a Bachelor of Science degree, with a dual major in computer and biology from an accredited institution of higher education in the United States. The record also contains copies of three other certificates for courses in computer studies that the beneficiary attended. The two certificates from the Amrita Institution of Computer Technology indicate training courses of one month or three months duration in 1997 and 2000.

To clarify the procedural history and subsequent appeal statements, the AAO will briefly review the director's request for further evidence dated July 12, 2006 and the petitioner's response to this RFE.

In his RFE, the director requested evidence that the beneficiary held a bachelor's degree as specified at Item 14, of the ETA Form 750, and stated that CIS held such language to require a degree equivalent to a four-year U.S. degree from an accredited institution. The director noted that the petitioner had not established that the Skiltek Computer Centre was an educational institution accredited in India to award the equivalent of a baccalaureate degree, or that DOEACC was an educational institution accredited to award degrees. In the response to the director's RFE, counsel submitted the Internet excerpts from the DOEACC website and stated that the DOEACC Society and Skiltek Computer Centre are educational institutions accredited by the government of India to award degrees, and that the DOEACC Society is among the leading postgraduate training institutions in India, offering bachelor's level and postgraduate-level coursework in computer science and related fields.

Counsel noted that the legacy INS Operations Instructions, Section 204.4, instructs adjudicators to request evaluations on degrees that did not appear to represent the equivalent of a specified degree in the United States and that any evaluation should consider formal education only, and not practical experience. Counsel asserted that such instructions imply that any combination of formal education that did not involve practical experience could be used as the basis of degree equivalency. Counsel noted that based on these instructions, the beneficiary's combination of educational degrees, which had been evaluated to be the equivalent of a U.S. bachelor's degree, met the requirements stipulated on the ETA Form 750.

Counsel also stated that the petitioner's hiring practice has always been to accept individuals with a U.S. bachelor's degree or an equivalent, such as a foreign degree. Counsel noted that the beneficiary held not only a foreign bachelor's degree, but her degree combined with additional coursework had been evaluated to be the equivalent of a U.S. bachelor's degree.

Counsel then stated that CIS did not have the authority to impose its interpretation of the job requirements stipulated on the ETA Form 750 on the petitioner. Counsel stated that it was undisputed that the petitioner intended its job requirements to mean a bachelor's degree or the equivalent to a bachelor's degree. Counsel also noted that when "Congress drafted the regulations"[6] for EB-3 classification, it did not require a degree alone for classification in that category. Counsel noted that the EB-3 classification was considered the "catch all" category and was defined broadly to include "skilled workers, professionals, and other workers."

[6] Congress drafted the statute, section 203(b)(3) of the Act. Legacy Immigration and Naturalization Service (INS) drafted the regulations, proposed at 56 Fed. Reg. 3070301 (July 5, 1991) and finalized at 56 Fed. Reg. 60897-01 (Nov. 29, 1991).

Counsel states that Congress clearly intended a much broader interpretation of the EB-3 classification than one limited to holders of bachelor's degrees from one source. Counsel contended that for CIS to conclude that a beneficiary must possess an actual degree from one single source is contrary to the plain language of the statute and the clear intent of Congress.

Counsel stated that CIS, on three different occasions, confirmed that a combination of degrees is acceptable. Counsel referred to the CIS Operations Instructions, and to what she described as two letters from [redacted] as proof that the CIS' only written policy allows a combination of degrees to establish the equivalence to a bachelor's degree.

Counsel states that to deny petitions based on unwritten policy is unlawful and unjust, and also prejudicial to the petitioner who had relied on prior written CIS policy and adjudication standards. Counsel also noted that the ETA Form 750 in the instant petition was filed almost five years ago, and that at the time of filing the document, any changes in adjudication policy could not have been anticipated by any party. Counsel also noted that the Form I-140 petition was originally filed at the Vermont Service Center and stated that adjudication standards may have been different at this Service Center. Counsel further asserted that based on CIS guidance, adjudications officers are to honor adjudication standards at the original place of filing. Counsel stated that CIS should therefore apply any and all standards that the Vermont Service Center would apply to Form I-140 petitions to the instant petition. Counsel stated that among the standards of the Vermont Service Center was the ability to rely on educational equivalencies of foreign education based on a combination of degrees.

In his decision dated September 21, 2006, the director noted [redacted]'s evaluation report that stated the beneficiary held a bachelor's degree equivalent to the completion of three years of studies leading to a bachelor of science degree with a major in biology, and determined that this bachelor's degree could not be found to meet the educational requirements stipulated on the ETA Form 750. The director then noted the beneficiary's coursework at a postgraduate training institution and her subsequent certificate in computer science and postgraduate diploma in computer applications. He then stated that it was not disputed that the "combination of education and training" completed by the beneficiary was equivalent to a bachelor's degree in computer science but rather that the initial evidence failed to establish that the beneficiary held a bachelor's degree that met the educational requirements stipulated on the ETA Form 750.[7]

On appeal, counsel reiterates statements made in the petitioner's response to the director's RFE, and submits further evidence with regard to the petitioner's recruitment of other employees. Counsel states that the director's conclusion that a combination of degrees is not the issue is erroneous, as a combination of degrees has always been accepted by the CIS to be the equivalent of a bachelor's degree without requiring the words "or equivalent' to appear on the ETA Form 750. Counsel outlines four issues in the appeal as follows:

> Whether the CIS interpretation that the EB-3 professional classification can only be obtained through a single source foreign bachelor's degree equivalent is reasonable;

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[7] The AAO interprets the director's statement to mean that the issue at hand is not whether the beneficiary can combine degrees to achieve an equivalency to a U.S. baccalaureate degree, but rather whether the beneficiary possesses a baccalaureate degree in computer science, engineering or a related field. As previously noted, [redacted] categorized the beneficiary's baccalaureate degree as a three-year program of studies in botany. He also evaluated the beneficiary's baccalaureate degree plus post graduate diploma and certificate as the equivalent of a U.S. baccalaureate degree with dual majors in computer science and biology. The ETA Form 750 does not stipulate any such dual degree.

Whether CIS abused its authority in imposing substantive rules on the petitioner without issuing regulations through notice and comment rulemaking;

Whether CIS improperly imposed its interpretation of the job requirements on the petitioner, and

Whether the petitioner reasonably relied on established CIS policy and adjudication history in drafting its job requirements.

With regard to the issue of a single source degree, counsel states that nowhere in the implementing regulations has CIS ever defined the term "foreign equivalent degree," but has rather allowed CIS adjudicators to interpret its meaning. Counsel then states that in 2004, CIS then chose to interpret its meaning based on an unpublished AAO decision and unwritten policy of adjudications standards.

Counsel refers to an unpublished AAO decision, in which the AAO determined that in order to possess a foreign equivalent degree, the beneficiary must possess a single source degree that is equivalent to a four-year U.S. baccalaureate degree. Counsel cites *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.* 467 U.S. 837(1984) and states that CIS's most recent interpretation of the term baccalaureate degree cannot be considered reasonable under *Chevron*. Counsel asserts that to claim a bachelor's degree can only be acquired from a single-source degree and cannot be acquired through a combination of educational sources is unreasonable because it is possible to receive a bachelor's level education in the United States from multiple sources. Counsel reiterates that Congress did not intend such a harsh interpretation of the statute. Counsel also notes that a broader interpretation of the statute is also supported by CIS's own comments to the regulations implementing the definitions of the EB-3 classification, as reported in 56 Fed Reg. 60897, 60900 (Nov. 29, 1991). Counsel quotes the following from the *Federal Register*: "[P]ersons formerly qualifying for third preference by virtue of education and experience equating to a bachelor's degree will qualify for the third employment category as skilled workers with more than two years training and experience." Counsel also notes that the director in his denial notice conceded that the beneficiary's educational credentials equated to a bachelor's degree in computer science.[8]

With regard to the second issue of whether CIS can impose its interpretation of the bachelor's degree on the petitioner without proper notice and comment rulemaking, counsel states that because CIS's current interpretation of the bachelor's degree requirement needed for EB-3 classification being a foreign equivalent degree from a single source has not been promulgated into law or regulations through formal rulemaking procedures, this interpretation can only be considered a policy statement. Counsel states that in order to require such a strict interpretation of the statute, CIS must issue proper guidelines for Service Centers to properly and consistently apply the rule, and that without such proper notice and comment rulemaking, CIS's attempt to force its own interpretation of the job requirement on the petitioner is unlawful..

Counsel cites to *Grace Korean United Methodist Church v Chertoff*, CV 04-1849-PK (D. Ore. Nov. 3, 2005), and states that it is the responsibility of the employer to establish the criteria of the proffered position as stipulated on the ETA Form 750. Counsel states that it cannot be disputed that the petitioner intended its job requirement of a bachelor's degree to mean a bachelor's degree or the equivalent to a bachelor's degree, including a combination of foreign degrees. Counsel notes that the fact that the ETA Form 750 does not

[8] As previously stated, the AAO does not view the director's comments as establishing that the beneficiary's combined three-year bachelor degree in botany and postgraduate studies are the equivalent of a baccalaureate degree in the fields stipulated on the Form ETA 750.

mention the words "bachelor's degree or equivalent" does not mean that the petitioner will not accept an equivalent. Counsel states that the petitioner drafted the job requirement on the ETA Form 750 knowing the beneficiary's full qualifications, and that it would not make logical or economical sense for the petitioner to draft its requirements in a manner that would naturally exclude the beneficiary. Counsel reiterates that the hiring policy of the petitioner has always been to accept individuals with a U.S. bachelor's degree or an equivalent, such as a foreign degree, and that the beneficiary not only holds a foreign bachelor's degree but her degree combined with additional coursework has been evaluated to be the equivalent of a U.S. bachelor's degree.

The court in *Grace Korean United Methodist Church* found 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." (Emphasis added.) A judge in the same district held that any assertion that DOL certification precludes CIS from considering whether the alien meets the educational requirements specified in the labor certification is wrong. *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 *5 (D. Ore Nov. 30, 2006). That court further concluded that while CIS was reasonable in considering only education as equivalent to a degree, it was not reasonable in requiring a single degree without considering the employer's intent. *Id.* at 8-9. Significantly, however, the *Snapnames* court stated: "CIS must 'examine the certified job offer exactly as it is completed by the prospective employer.'" The court continued that "[w]here the language is ambiguous, however, a question arises as to how much deference to afford the agency's interpretation." In reaching its conclusion that the labor certification in that matter could allow a combination of education credentials (but not work experience), the court focused on the dictionary definition of "equivalent." Significantly, as acknowledged by the petitioner and counsel, the petitioner in the matter before us did not use the word "equivalent." Thus, the case cited by counsel and *Snapnames* are not on point. *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).

Regardless, 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.

Counsel then states that the petitioner has reasonably relied on CIS written policy and case history in drafting its job requirements on the ETA Form 750. Counsel then notes that CIS on four occasions has confirmed in writing that a combination of degrees is acceptable without any mention of requiring the words "bachelor's degree or equivalent" to appear on the ETA Form 750. Counsel reiterates her remarks with regard to the legacy INS Operations Instructions, Section 204.4, and to [redacted]s letters issued in 2003.

Counsel also asserts that the policy of combining degrees was reconfirmed in a recent memorandum issued by Michael Aytes, Acting Associate Director, CIS Domestic Operations.[9] Counsel quotes the following excerpt from Mr. Aytes' memorandum: "In cases involving foreign degrees, you may favorably consider a credentials evaluation performed by a certified independent credentials evaluator who has provided a credible, logical, and well-documented case for such an equivalency determination that is based solely on the foreign degree(s)." Counsel states that the plural use of the word "degree" in the Aytes memo confirms that the CIS policy has always been to accept a combination of foreign degrees to equate a U.S. baccalaureate degree.

[9] Memorandum from Michael Aytes, Acting Associate Director, Domestic Operations, *AFM Update: Chapter 22: Employment-based Petitions* ([redacted], HQPRD 70/23.12, September 12, 2006.

Counsel then asserts that since CIS has spoken many times on this issue, it is reasonable to assume that a foreign equivalent degree has been and continues to be interpreted to include a combination of degrees.

Counsel's reliance on the Aytes memo is misplaced. The language quoted falls under the discussion of members of the professions holding an advanced degree under section 203(b)(2) of the Act. An advanced degree is defined at 8 C.F.R. § 204.5(k)(2) as any academic or professional degree above that of a baccalaureate. Thus, these aliens will typically have more than one degree. Notably, the same memorandum's discussion of the classifications set forth at section 203(b)(3) of the Act, at issue in this matter, includes the following: "In all cases, the alien must have the minimum education and work experience requirements that are specified on the individual labor certification. Therefore, if the labor certification specifies that a bachelor's degree in a given field is the minimum requirement for entry in to the position, the alien must possess a minimum of a U.S. bachelor's degree or its foreign equivalent *degree* in the field." (Emphasis added.) Counsel also notes that none of the written CIS policies mention that in order for a combination of degrees to be accepted by CIS, the language "bachelor's degree or equivalent" must appear on the ETA Form 750. Counsel also asserts that the petitioner has consistently drafted its job requirements on the ETA Forms 750 using just the words "bachelor's degree" without the words "or equivalent" and has reasonably relied on prior Service Center approval of this terminology in previous petitions. Counsel states that the petitioner had not had any Form I-140 petitions denied because of the lack of the words "or equivalent" on the ETA Form 750.

Counsel submits copies of ten certified Forms ETA 750 for the proffered positions of programmer analyst, senior programmer analyst, and Smalltalk Developer, and one copy of a Form 9089 Application for Permanent Employment Certification[10] for the position of Senior ETL Architect. The petitioner indicated "yes" on all forms with regard to whether college was required, and indicates bachelor of science degree in computer, engineering or related field with varying years of work experience in either the proffered position or in a related field. The one Form 9089 for the position of Senior ETL Architect submitted to the record indicates in Section H, Item 4, and 4-B that a bachelor's degree is the minimum educational level with major studies in computer science or a related field, and in Item 8 of Section H, that no alternate combination of education and experience is acceptable. The ETA 9089 form also indicated in Item 7 through 7-A that an alternate field of study that is acceptable was computer science or a related field, and in Item 9, indicates that a foreign educational equivalent is acceptable and that experience of 24 months in relevant computer/information technology occupations was also acceptable. Counsel states that these ETA Forms were dated from 2001 to 2004, and showed a consistent policy from 2001 to the present on the part of the petitioner of using identical language for the petitioner's job requirements and a consistent policy of CIS acceptance of such language.

Counsel then notes that the instant petition was originally filed at the Vermont Service Center and reiterates that the adjudications standards at the Center might have been differed. Counsel again states that pursuant to CIS guidance, adjudicators are to honor adjudication standards at the original place of filing, and therefore, CIS should apply any and all standards that the Vermont Service Center would apply to Form I-140 petitions. Counsel states that among the Vermont Service Center standards is the ability to rely on educational equivalencies based on a combination of foreign degrees to establish that a beneficiary has the equivalent to a U.S. baccalaureate degree.

Counsel notes that the director in his decision states that the petitioner had presented no evidence to support its claims with regard to the Vermont Service Center adjudications. Counsel provides a list of three Form I-

[10] The successor document to the ETA Form 750 for applications for labor certifications submitted after March 28, 2005.

140 petitions that counsel states were filed at the Vermont Service Center and approved in November 2004, January 2005 or September 2005. Counsel provides no identifying numbers for the petitions, any actual documents as to the beneficiaries' qualifications, or copies of the Forms ETA 750.

Counsel also submits a list of three other petitions that she claimed were filed by the petitioner at either the Texas or Nebraska Service Centers in 2006 and approved. Partial information from these two lists are indicated below:

Service Center	Degree Required in Part 14 of ETA 750	Foreign Degrees(s) Including Years	Educational U.S. Equivalency
Vermont	Bachelor's Degree in Physical or Life Science	Bachelor of Science (1972-1975) Master of Science (1977-1979)	Bachelor of Science Degree
Vermont	Bachelor's Degree in Physical or Life Science	Bachelor of Science (1980-1983) Bachelor of Science (1991)	Bachelor's Degree
Vermont	Bachelor's Degree in Computer Science/ Related Field	Bachelor of Science (1990-1993) Master of Science (1994-1996)	Bachelor's Degree in Computer Information Systems
Texas	Bachelor's Degree in	Bachelor of Science (1991-1993) and Coursework in computers (1993-1994)	Bachelor of Science Degree
Nebraska	Bachelor's Degree in Computer Science Engineering or related	Diploma in Civil Engineering (1988-1991) and Bachelor of Engineering (1991-1994)	Bachelor of Science Degree in Engineering
Texas	Bachelor's Degree in Computer Science or Related field	Bachelor of Science (1990-1993) and Master of Computer Management (1997-1999)	Bachelor's Degree in Computer Science

Counsel states that based on these examples of prior approved Form I-140 petitions, in combination with the petitioner's standing hiring policy, a pattern has developed in adjudication standards among the various Service Centers, on which the petitioner has reasonably relied in the past and present.

Counsel states that the petitioner's recruitment campaign done over five years ago for the proffered position was done in good faith. Counsel notes that the petitioner not only hired the beneficiary but also seven other applicants, including several U.S. citizens. Counsel then states that at the time the labor certification was filed, any changes in adjudication policy could not have been anticipated by any part and in fact the beneficiary's educational qualifications would have been deemed to meet the requirements stipulated on the ETA Form 750 by any one of the four Services Centers. Counsel notes that based on the examples provided to the record, such cases continue to be approved by CIS today. Counsel states that the instant Form I-140 petition should be approved under the basic principle of fairness. Counsel notes that it is not fair to the Service that CIS failed to issue proper guidance on this issue or consistently applied the same standards to all cases, and it is not fair to the petitioner that the CIS failed to issue proper regulations on this issue so that the job requirements could be stated in an appropriate

manner. Counsel also asserts that in the instant petition process, the petitioner was hiring numerous computer-related positions in addition to several programmer/analyst positions, and that the job advertisements only listed the job titles of the positions and did not in any way specify the qualifications needed for the positions. Counsel states that the fact the advertisement did not list the qualifications and did not state that a bachelor's degree was required for the position, meant that no U.S. worker who was potentially qualified for the position would have been discouraged from applying because they were not aware of the fact that a bachelor's degree equivalent would be accepted by the petitioner. Counsel states that the applicant pool for the proffered position was probably much broader because it allowed any person believing they were qualified for the position, whether through education, training, experience, or a combination thereof, to apply for the position. Counsel also notes that the recruitment report that was submitted with the ETA Form 750 confirms that not a single person was rejected for lack of a bachelor's degree or foreign equivalent degree.

Counsel then states that since the petitioner conducted an acceptable recruitment campaign and no U.S. workers were discouraged from applying for the proffered position, the only remaining issue in the matter appears to be the statement contained on the ETA Form 750. Counsel asserts that no matter what determination is made on the acceptability of combined degrees, corrective justice demands that the instant Form I-140 petition be approved. Counsel also states that alternatively, if the petition cannot be approved for EB-3 classification under the professional classification, it be approved under the skilled worker classification. Counsel cites to the Act, Section 203(b)(3)(A), 8 U.S.C. § 1153.

The AAO notes that counsel on appeal provides a graph that provides information on three employment-based petitions submitted by the petitioner to the Vermont Service Center, as well as another graph that describes the educational qualifications for three other beneficiaries on petitions submitted to the Texas or Nebraska Service Center. All the listed petitions describe the educational qualifications of the respective beneficiaries as being at a minimum, a three-year Bachelor of Science degree. Counsel on appeal states that the list of three petitions approved by the Vermont Service Center demonstrates the Vermont Service Center's policy of accepting a combination of degrees without the use of the words "bachelor's degree or equivalent" on the ETA Form 750. Counsel asserts that the other two service centers also approve petitions accepting the policy of combining degrees to equate to a U.S. baccalaureate degree.

Counsel's assertions with regard to distinct adjudication standards for the Vermont Service Center are not found persuasive. The AAO notes that all three Service Centers are held to the same adjudicatory standards, and regulatory and statutory guidance. On appeal, the petitioner also noted that CIS had approved other petitions that had been previously filed by the petitioner with similar credentials. The director's decision does not indicate whether he reviewed the prior approvals of the other nonimmigrant petitions described by counsel on appeal, or any other petitions filed by the petitioner. If the previous nonimmigrant petitions were approved based on the same unsupported assertions that are contained in the current record, the approvals would constitute clear and gross error on the part of the director. The AAO is not required to approve applications or petitions where eligibility has not been demonstrated, merely because of prior approvals that may have been erroneous. *See, e.g., Matter of Church Scientology International*, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that CIS or any agency must treat acknowledged errors as binding precedent. *Sussex Engg. Ltd. v. Montgomery*, 825 F.2d 1084, 1090 (6th Cir. 1987); *cert. denied*, 485 U.S. 1008 (1988). Furthermore, the AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. Even if a service center director had approved the immigrant petitions on behalf of [the beneficiary], the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*. 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

Counsel's assertions regarding the petitioner's reliance on the approval of prior petitions is not persuasive. A similar assertion was raised and rejected regarding the prior approval of similar investment plans pursuant to section 203(b)(5) of the Act (relating to Employment Creation aliens). *Matter of Izummi,* 22 I&N Dec. 169, 196 (Comm. 1998). *See also Golden Rainbow Freedom Fund v. Janet Reno*, Case No. C99-0755C (W.D. Washington Sept. 14, 2000) *aff'd* 2001 WL 1491258 (9th Cir. Nov. 26, 2001); *Spencer Enterprises, Inc.*, 229 F. Supp. 2d 1025, 1045 (Calif. 2001), *aff'd* 345 F. 3d 683 (9th Cir. 2003).

Further, the AAO also notes that the record does not include any documentary evidence as to the visa petitions described by the petitioner and thus, can provide no definitive answers to the questions raised by counsel with regard to these specific petitions. For example, without reviewing actual ETA Forms 750 submitted with these petitions, it is not possible to ascertain whether the petitioner required a four-year baccalaureate degree or accepted the three-year baccalaureate degree plus an additional degree in the stipulated requirements for these visa petitions. The AAO does note that three of the six petitions described indicated the beneficiary held a master's degree in science or a field stipulated by the ETA 750. A one-year master's degree in the same field stipulated on the ETA Form 750 represents a total of at least four years of study, meeting any specific requirement on the ETA 750 that the beneficiary have four years of college education, if entrance to the one-year Master's program was contingent upon the completion of a relevant undergraduate course of study.

Counsel on appeal also states that the legacy INS Operating Instructions and two letters from [redacted] Director of Business and Trade Services, CIS Office of Adjudications, all establish that a combination of degrees are allowed in determining whether an beneficiary's academic qualifications are the equivalent of a U.S. baccalaureate degree, when the beneficiary's studies are less than a four year course of study.

Counsel's assertions with regard to the relevance of these documents are not persuasive. With regard to legacy INS Operations Instructions, counsel's assertion that this document establishes that petitioners can combine degrees in determining whether a beneficiary's tertiary studies are the equivalent of a U.S. baccalaureate degree is not persuasive. The Legacy INS Operations Instructions, Section 204.4 addresses when adjudication officers should request an educational equivalency evaluation, and instructs the officers to consider formal education only, rather than vocational, with regard to job training, and/or work experience. Counsel's conclusion that such instructions could support the combination of any formal education that did not involve practical experience for purposes of determining the equivalency of a beneficiary's studies to a U.S. baccalaureate degree in a specific field is not supported by the manual.

The AAO notes that the two letters from to which counsel refers in the petitioner's response to the director's RFE, and on appeal, are actually only one letter dated January 7, 2003 from [redacted] with an earlier correspondence from [redacted]. 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 at 196-197; *see also,* Memorandum from [redacted] Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Counsel appears to combine the issue of combined degrees with the question of whether the petitioner has to list the words "bachelor's degree or equivalent" on the ETA Form 750. The AAO views these issues as two distinct matters.

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). CIS is obligated to examine the certified job offer exactly as it is completed by the prospective employer. *Rosedale & Linden Park Co. v. Smith,* 595 F. Supp. 829, 833 (DC D. C. 1984) *cited in Snapnames,* 2006 WL 3491005 at *6, 7. The DOL provides guidance to petitioners with regard to the actual wording utilized on the ETA Form 750.

With regard to the inclusion of the words "or equivalent" on the ETA Form 750, The U.S. Department of Labor (DOL) has provided the following field guidance: when the Form ETA 750 indicates, for example, that a "bachelor's degree in computer science" is required, and the beneficiary has a four-year bachelor's degree in computer science from the University of Florence, "there is no requirement that the employer include 'or equivalent' after the degree requirement" on the Form ETA 750 or in its advertisement and recruitment efforts. *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). Further, where the Form ETA 750 indicates that a "U.S. bachelor's degree or the equivalent" may qualify an applicant for a position, where no specific terms are set out on the Form ETA 750 or in the employer's recruitment efforts to define the term "equivalent", "we understand [equivalent] to mean the employer is willing to accept an equivalent foreign degree." *See* Ltr. From [redacted], Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to [redacted], INS (October 27, 1992). Where the Form ETA 750 indicates, for example, that work experience or a certain combination of lesser diplomas or degrees may be substituted for a bachelor's degree, "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 [to the degree] in order to qualify for the job." *See* Memo. from [redacted]l, 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). State Employment Security Agencies (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]g, Esq., Jackson & Hertogs (March 9, 1993). Finally, 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 [CIS] to accept the employer's definition." *Id.* To our knowledge, the field guidance memoranda referred to here have not been rescinded.

Thus, the DOL guidance provided above indicates the use of the phrase "or equivalent" is appropriate when the petitioner, as alleged in the instant petition, would accept a combination of degrees or other work experience as the equivalent of a foreign equivalent degree. When the petitioner accepts a foreign equivalent degree in lieu of the U.S. baccalaureate degree, the petitioner does not have to utilize the word "or equivalent". Furthermore, if the petitioner would accept a combination of work and experience, the DOL guidance outlines the policy of specifying precisely what the alternative or educational equivalency would be on the ETA Form 750 or 9089, and throughout the recruitment campaign and I-140 petition process.

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. As stated above, 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. at 406. *See also, Mandany v. Smith*, 696 F.2d at 1008; *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d at 1.

As stated previously, 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). 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 programmer/analyst. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	yes
	High School	yes
	College	yes
	College Degree Required	bachelor of science degree in computer sci[ence],Eng[ineerin]g or related field
	Major Field of Study	Comp Sci, Eng'gg or related field

The applicant must also have one year of experience in the job offered, or one year of work experience in a related computer/information technology field. Item 15 of Form ETA 750A did not state any further special requirements.

The beneficiary set forth her credentials on Form ETA-750B and signed her 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 she attended Mahatma Ghandi University, in India studying natural science from June 1989 to March 1992 and received a Bachelor of Science. She also indicated she studied at the DOEACC Society in India studying computer science from 1992 to July 1993, and received an "O-level certification." Finally the beneficiary stated that she attended Skiltek Computer Center, studying computer applications from June 1992 to October 1993, and received a post-graduate 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 undefined number of years of university-level studies, resulting in a bachelor of science degree in computer science, engineering or related field, and one year of work experience in the proffered position or in a related computer/information technology field.

The petitioner did not 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. *Id.* at 245. Evaluating the actual credentials held by the beneficiary is provided through credential evaluations submitted into the record of proceeding for this case. It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides: "[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight."

With regard to the educational equivalency document submitted to the record, as previously stated, Mr. [redacted] determined that the beneficiary's three-year baccalaureate program in biology and her one-year studies in the DOEACC "O" Level examination and in the Skiltek Postgraduate Degree in Computer Applications were equivalent to a four year U.S. baccalaureate degree with a dual major in biology and computers science. The AAO does not find [redacted]s statements to be persuasive, primarily because the beneficiary did not continue computer studies when she enrolled in the DOEACC course on the Skiltek computer program but rather began her studies in computer applications at that time. Thus the beneficiary's studies at the Skiltek Computer Centre and her simultaneous studies at DOEACC are her entry level courses into the field of study stipulated on the ETA Form 750. Although [redacted] describes the equivalency of the beneficiary's combined studies as a single baccalaureate degree, with dual majors of computer science and biology, this equivalency is not equal to a single baccalaureate degree in the stipulated fields of study.

As the director noted, the Skiltek/DOEACC website indicates that the "O" level examination is the foundation course, is open to students and employees who have passed 10+2/Industrial Training Institute (ITI) educational scheme one year after matriculation. The 10+2 scheme appears to be equivalent to a high school matriculation. Thus, the "O" level examination is not the equivalent of a fourth year of more advanced studies in computer applications.[11]

With regard to the Skiltek Post Graduate Degree in Computer Applications, the Skiltek website states the "graduates, post graduates, and final year graduates can apply." No prior experience in computer applications is required.[12]

The record suggests that the Skiltek/DOEACC is accredited to award degrees and the Skiltek courses are also appropriate for a wide range of jobs, and are not exclusively directed at baccalaureate-level education. Thus [redacted]'s evaluation that the beneficiary's three-year program degree plus her studies through the DOEACC scheme and through the Skiltek Postgraduate Degree one-year program is the equivalent of a U.S. baccalaureate degree in both biology and computer science appears inconsistent with the information provided by the director. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice

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[11] The AAO also consulted pages 15 to 17 of "India A Special Report on the Higher Education system and Guide to the Academic Placement of Students in Educational Institution in the United States," co-written in 1997 by [redacted] and [redacted] and published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) and NAFSA; Association of International Educators. The information in this publication is consistent with that noted by the director, stating that "O" level examination is considered to be a "foundation level" and that "B" level examination is "comparable to *Indian* bachelor-level proficiency." (Emphasis added.)

[12] The website consulted by the AAO also states the following:

> The Ministry of Human Resource Development, Government of India has recognized 'O' Level and 'A' Level examinations conducted by Department of Electronics Accreditation of Computer Courses (DOEACC) scheme equivalent to Foundation Course and Advanced Diploma Level Course for the purpose of employment to posts and services under the Central Government vide notification Nos [redacted] dated 01.03.96 and 10.04.96. DOEACC Courses are recognized by All Indian Council of Technical Education (AICTE), Union Public Service Commission (UPSC), Public Sector Undertakings (PSUs) and Private Sector Undertakings, banks etc. DOEACC qualifiers are eligible for registration in employment exchanges for job assistance. DOEACC Diploma is also recognized for jobs in multinational and national companies.

See http://www.skiltekindia.com/html/s0200frm.htm (Accessed on May 20, 2008.)

unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner has not resolved this inconsistency. Furthermore the question would still remain of whether a dual major Bachelor of Science degree with majors in computer science and biology corresponds to the educational requirements outlined in the ETA Form 750.

Moreover, contrary to counsel's assertions, 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 [redacted]' 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.

The petitioner initially stated that it was filing the instant petition under the employment-based professional classification. Counsel on appeal states that if the beneficiary does not qualify under the professional classification of the employment-based visa petitions, that her qualifications be considered under the skilled worker classification. Therefore the AAO will comment on the requisites of both classifications in these proceedings. The AAO will first examine the occupational category for the proffered position as established by DOL.

The proffered position requires a bachelor's degree and one year of experience. Because of those requirements, the proffered position is for a professional. DOL assigned the occupational code of [redacted], programmer 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/link/summary/15-1051.00 (accessed June 10, 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." 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 may be properly analyzed as professional since the position requires a bachelor of science degree in computer science, engineering, or a related field and one year of experience in the job offered or in a related computer/information technology field, which is required by 8 C.F.R. § 204.5(l)(3)(ii)(C) and DOL's classification and assignment of educational and experiential requirements for the occupation. The professional category is the most appropriate category for the proffered position based on its educational and experience requirements.

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, contrary to counsel's assertions, 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 in computer science, engineering or a related field, and one year of work experience in the proffered job or in a related computer/information technology field.

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.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), guiding evidentiary requirements for "professionals," states the following:

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

(Emphasis added.) 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 and "O-level" certificate 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.

Even if we were to consider the petition under the skilled worker classification, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for "skilled workers," states the following:

> 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.

(Emphasis added).

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. Thus, regardless of category sought, the beneficiary must have a bachelor's degree or its foreign equivalent in computer sciences, engineering or a related field and one year of work experience in the proffered position.

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 in computer studies, engineering or a related field, and two years of work experience in the proffered job. 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.[13]

The beneficiary was required to have a bachelor's degree on the Form ETA 750. Based on the beneficiary's educational documentation, namely, her baccalaureate diploma from Mahatma Gandhi University with studies in botany, and subsequent certificate and postgraduate diploma in computer studies, she does not possess a bachelor degree in computer studies, engineering or a related field, as stipulated on the Form ETA 750. We reiterate that the petitioner has not overcome the inconsistencies between the evaluation provided and the materials cited by the director.

On appeal, counsel also notes that the recruitment report that was submitted with the ETA Form 750 confirms that not a single applicant was rejected for lack of a bachelor's degree or foreign equivalent degree, and that seven individuals in addition to the beneficiary, were hired, including U.S. citizens. The AAO notes that the record does not contain any evidentiary documentation as to the actual educational credentials held by the applicants listed on the petitioner's recruitment report. Further the record is not clear that this recruitment report was specific to the beneficiary's Form I-140 visa petition process. Furthermore, the petitioner has not established that it hired anyone with educational credentials similar to the beneficiary's credentials, namely, a three-year degree in a field unrelated to the stipulated fields of computer science, engineering, or a related field, in combination with

[13] 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.

additional post-graduate studies in computer science. As stated previously, the director's decision appeared to be addressed to the beneficiary's lack of a four year baccalaureate degree in computer science, engineering, or a related field, rather than whether the combination of her three year degree and post-graduate studies were the equivalent to a U.S. baccalaureate degree from an accredited U.S. educational institution. The AAO in this matter determines that the combination of a three-year program baccalaureate studies in an unrelated field plus additional postgraduate studies in computer science is not the equivalent of a U.S. baccalaureate degree in computer science, engineering, or a related field.

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

ORDER: The appeal is dismissed.