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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

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FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JAN 22 2009

SRC 06 267 53276

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a general contracting firm. It seeks to employ the beneficiary permanently in the United States as a project manager. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification.

Specifically, on November 17, 2006, the director determined that the beneficiary did not possess a bachelor's degree or a foreign equivalent degree in engineering. The petitioner, through counsel, submits additional evidence and asserts that the beneficiary has the required educational credentials and meets the qualifications set forth in the approved labor certification.[1]

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).

Section 203(b)(3)(A)(ii) of 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.[2]

A labor certification is an integral part of this petition, but the issuance of an ETA Form 9089 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. *See* 8 C.F.R. § 103.2(b)(1), (12). *See also 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 priority date is the date the ETA Form 9089 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The priority date for the

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[1] 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.

[2] Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

instant petition is October 26, 2005. The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on September 12, 2006.

The director's denial was based on his conclusion that the beneficiary's diplomas from South Africa, consisting of a National Diploma and a National Higher Diploma from the Technikon Witwatersrand, did not constitute a foreign equivalent degree to a four-year U.S. bachelor's degree in engineering, and failed to meet the requirements for classification as a professional.

On appeal, counsel submits additional evidence and contends that the beneficiary's National Higher Diploma is the equivalent to a U.S. bachelor's degree and satisfies the terms of the labor certification. Specifically, counsel asserts that a combination of a three-year National Diploma and a one-year National Higher Diploma is the equivalent of a U.S. bachelor's degree. She also asserts that the beneficiary's credentials are similar to those considered in a prior AAO case in which a beneficiary held a three-year Indian bachelor's degree in botany and subsequently obtained a Bachelor of Education degree. In that case, based on the AAO's review of that beneficiary's academic credentials and the Electronic Database for Global Education (EDGE),[3] the AAO determined that he had the equivalent of a U.S. bachelor's degree and sustained the appeal.

On September 24, 2008, the AAO issued a request for evidence from the petitioner asking for: 1) evidence that the beneficiary's Higher National Diploma from the Technikon Witwatersrand in South Africa represents the equivalent of a U.S. bachelor's degree in engineering; and 2) copies of evidence of recruitment efforts, including correspondence, postings and advertisements that were submitted to the DOL. This request was made in order to determine the petitioner's intent about the actual minimum requirements of the proffered position and that those minimum requirements were clear to DOL and potential qualified candidates during the labor market test.

Authority to Evaluate Whether the Alien is Eligible for the Classification Sought

[3] EDGE was 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.accrao.org/register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

As noted above, the ETA Form 9089 in this matter is certified by the DOL. Thus, at the outset, it is useful to discuss the 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, including the 9th Circuit that covers the jurisdiction for this matter.

> 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). 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 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).

Qualifications for 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 the DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the

> alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. ***The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.***

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, reached a similar decision in *Black Const. Corp. v. INS*, 746 F.2d 503, 504 (1984).

> The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). ***See generally K.R.K. Irvine, Inc. v.*** *Landon*, 699 F.2d 1006, 1008 (9th Cir.1983).
>
> 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 United States Citizenship and Immigration Services (USCIS) "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." A judge in the same district held that the assertion that DOL certification precludes USCIS 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). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The *Snapnames.com, Inc.* court concluded that that 'B.S. or foreign equivalent' relates sole to the alien's educational background and precludes consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* at *14. However, in the context of a skilled worker classification, deference may be given to an employer's intent because the court termed the word 'equivalent' to be ambiguous. *Id. at *14.* If the classification sought is for a professional or advanced degree professional, the court found that USCIS properly required that a single foreign degree may be required. *But see 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).

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.

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

In this case, the labor certification format is not the ETA 750 under review in *Grace Korean United Methodist Church* and *Snapnames.com, Inc.*, but the ETA Form 9089. On this form, the minimum requirements for the position of a project manager are found on Part H. The proffered position requires a Bachelor's Degree in Engineering and 12 months of experience in the job offered. Part H, Item 8 indicates that the employer will not accept an alternative combination of education and experience. Part H, Item 9 reflects that a foreign educational equivalent is acceptable. Item(s) 10, 10-A and 10-B indicate that 12 months experience in an alternate occupation is acceptable. The alternate occupation is specified as "negotiated construction project management, such as site engineer." Item 11 of Part H reflects the job duties of the certified position as follows:

> Prepare estimates/bids on construction projects; manage projects from start to completion; oversee subcontractors as well as company employees on work sites; serve as safety director; oversee compliance with OSHA regulations. Knowledge of computer based construction estimating software required.

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is "Bachelor's." In corroboration of the ETA Form 9089, the petitioner provided a copy the beneficiary's National Diploma and National Higher Diploma in Civil Engineering from the Technikon Witwatersrand in South Africa. The National Diploma lists the courses taken and indicates that the diploma was obtained on January 7, 1992. A notation below the summary of classes states that the program represented 1.5 formal time in years and 1.5 experiential time in years for a total of 3 years. The National Higher Diploma, obtained on January 7, 1993, similarly states that the one-year program represented .5 years of formal time and .5 years of experiential time.

Additionally, on Item a, 1, of Part I of the ETA Form 9089, the petitioner answered "yes" to the question of whether the application was for a professional occupation other than that of a college or university teacher.

As set forth above, in reference to formal education, the proffered position requires a bachelor's degree or foreign educational equivalent in engineering.

As shown on the ETA Form 9089, the DOL assigned the occupational code and title of 11-9021, (construction managers) to the certified position. DOL's occupational codes are assigned based

on normalized occupational standards. According to online database, 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."[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.

Based on both the stated minimum requirements described on the ETA Form 9089, the standardized occupational requirements as set forth above, and the expansive job duties of the certified position, as well as the petitioner's request for classification as a professional reflected on Part I, a, 1 of the labor certification, the petition will be considered under the professional category. Even if considered as a skilled worker, which does not require that an applicant possess a baccalaureate degree, the beneficiary must still meet the terms set forth on the labor certification. 8 C.F.R. § 204.5(l)(3)(B). Additionally, in such a case, USCIS will also examine whether the petitioner's intent to accept some other form of an academic equivalency was communicated to the DOL and to other potential U.S. applicants.

Counsel asserts that the credential evaluations submitted support the assertion that the beneficiary's National Higher Diploma in civil engineering is the equivalent to a U.S. Bachelor of Engineering degree. The credential evaluations were submitted as follows:

1) A credentials evaluation from Morningside Evaluations and Consulting authored by [redacted] states that the beneficiary's National Diploma from the Technikon Witwatersrand represented three years of academic coursework for a candidate seeking a university degree from the United States. The evaluation concludes that the beneficiary's National Higher Diploma represented the completion of one year of study, which was evidence that the beneficiary completed his course of study at Technikon Witwatersrand and obtained the equivalent of a Bachelor of Science Degree in Civil Engineering from an accredited U.S. institution of higher education.

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[4] http://online.onetcenter.org//link/summary/ (accessed December 29, 2008).

2) A second evaluation from World Education Services (author unknown) also determines that the beneficiary's studies resulting in his 1992 National Diploma[5] represented a U.S. equivalency of three years of undergraduate study in civil engineering technology. The evaluation then states that the beneficiary's National Higher Diploma in conjunction with the National Diploma, which was a prerequisite for obtaining the National Higher Diploma, represented the U.S. equivalency of a bachelor's degree in civil engineering technology.

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 in an immigrant petition sets forth the requirement that a beneficiary must produce one degree from a college or university 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.

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. It is further noted that 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).

Counsel asserts that the director failed to recognize the beneficiary's National Higher Diploma from the Technikon Witwatersrand. Counsel further asserts that it represents the attainment of a single foreign equivalent degree to a U.S. bachelor's degree because the National Higher Diploma follows the beneficiary's National Diploma, which required three years of university study. As stated above, counsel relies upon the credentials evaluations submitted to the record and also cites a 2008 AAO case in which a beneficiary held a three-year Bachelor of Science degree in botany from an Indian university and subsequently attained a bachelor of education degree from the same university based on an additional year of study. The AAO cited the EDGE

[5] The grade transcripts upon which this evaluation was based were issued by the University of Johannesburg.

recommendation in finding that the beneficiary's credentials satisfied the requirements of the labor certification. It was concluded that he held a single foreign equivalent degree to be qualified as a professional for third preference visa category.

It is noted that the earlier AAO decision is based on different circumstances and does not constitute a precedent decision. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions 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). USCIS is bound by the Act, agency regulations, precedent decision of the agency and published decisions from the circuit court of appeals from whatever circuit that action arose. *See N.L.R.B.* v. *Ashkenazy Property Management Corp.* 817 F.2d 74, 75 (9th Cir. 1987)(administrative agencies are not free to refuse to follow precedent in cases originating with the circuit); *R.L. Inv. Ltd. Partners v. INS,* 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated).

Further, the AAO case cited by counsel, involved India's educational system not South Africa's, and specifically relied upon the EDGE credential advice. In the prior case involving Indian credentials, EDGE provided that "[t]he Bachelor of Education, following a three-year bachelor's degree, represents attainment of a level of education comparable to a bachelor's degree in the United States." In this case, the credential advice in EDGE does not mention that a National Diploma or National Higher Diploma have any equivalency to a bachelor's degree in the United States and indicates only that:

> The National Diploma represents attainment of a level of education comparable to 2-3 years of university study in the United States. Credit may be awarded on a course-by-course basis.

Relevant to the National Higher Diploma, EDGE states that the National Diploma is the entry requirement and the credential advice provides only that:

> The Higher National Diploma represents attainment of a level comparable to 1 year of university study in the United States. Credit may be awarded on a course-by-course basis.

In contrast to the two evaluations that the petitioner submitted, EDGE does not state that either diploma or a combination of both diplomas is the equivalent to a U.S. bachelor's degree. Moreover, with regard to the evaluations submitted, it is noted USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). It is further noted that the beneficiary's diplomas each represented 1.5 years and .5 years, respectively, experiential time rather than strictly academic studies. Additionally, in

another AACRAO publication, it indicates that a South African National Diploma or National Higher Diploma is considered as available for transfer or possible advanced credit for U.S. undergraduate studies, but does not suggest that either would be equivalent to a U.S. bachelor's degree or considered as a qualifying credential for graduate studies. *See Foreign Educational Credentials Required,* 210 (5th ed. 2003).

In this matter, because we do not conclude that the beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," he may not qualify as a professional under section 203(b)(3)(A)(ii) of the Act in the professional classification.

Even if considered under the skilled worker classification, which we do not accept as being the appropriate visa category in this case, the AAO is not persuaded that the beneficiary is eligible for such a classification. As mentioned above, the record supports a finding that the certified position should be considered as a professional based on the position's requirements of a bachelor's degree in engineering and degree of responsibilities described in the job duties as set forth on the ETA Form 9089. Further, the petitioner's express intent that the occupation be considered as a professional occupation on Part I, a, 1 on the ETA Form 9089 is also persuasive.

Further, within the context of a skilled worker classification, the ETA Form 9089 does not provide that the minimum academic requirements of bachelor's degree in might be met through some other defined equivalency. The petitioner specifically marked in H.8. that there was no acceptable alternate combination of education and experience. Additionally, we note that the petitioner did not designate anywhere on ETA Form 9089 that it was willing to accept a bachelor or equivalent based on education, training and/or experience.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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). Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petition's beneficiary must demonstrate to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS 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.

It is noted that counsel submitted various documents related to the petitioner's recruitment efforts, including an affidavit from the petitioner's vice-president stating that the company was willing to accept candidates with any combination of degrees that would be equivalent to a bachelor's degree in engineering. He further stated that the newspaper advertisements claimed that the requirement was "Bachelors in Engineering or equivalent," and that applicants were not disqualified due to their degrees, but that most did not have the experience needed for the certified position. A review of the copies of advertisements reflects that the petitioner described the position as requiring a bachelor's in engineering or equivalent, although a copy of an advertisement appearing to be a state employer job order does not list an educational requirement. None of the advertisements defined what the employer would accept as "equivalent." Nor is any specific equivalent defined on the ETA Form 9089. Additionally, while ETA Form 9089 requires that the candidate have a bachelor's degree in Engineering and one year of experience in the position offered, or one year in an alternate occupation involving negotiating construction project management such as a site engineer, the advertisements failed to put candidates on notice of the one year experience requirement. The advertisements only referenced the education requirement, but not the required work experience. We would not conclude that the petitioner's recruitment fully apprised potential U.S. applicants of the position's full education and experience requirements.

Even if we accept that the position in this case could be classified as a skilled worker, and we do not, based on the terms of the labor certification and the record of proceedings including copies of recruitment materials, the AAO does not conclude that the petitioner clearly communicated that a defined equivalency of lesser degrees or diplomas was an acceptable foreign equivalent to the DOL or other potential applicants.

In this matter, 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. Based on the foregoing, the petitioner failed to demonstrate that the beneficiary met the qualifications of the labor certification. 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.