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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm 3000
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

JAN 2 2 2009

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:

LIN 07 012 53258

IN RE: Petitioner:
Beneficiary: [redacted]

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

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

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, Nebraska 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 finance firm. It seeks to employ the beneficiary permanently in the United States as a junior programmer. As required by statute, a Form ETA 750,[1] Application for Alien 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 September 19, 2007, the director determined that the beneficiary did not complete four years of college and did not possess a bachelor's degree or a foreign equivalent degree in computer science, computer engineering or electrical engineering.

On appeal, 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.[2]

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

The petitioner did not specify whether the classification sought is as a professional or as a skilled worker. 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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority

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[1] After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

[2] 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.

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 Form ETA 750 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 instant petition is January 30, 2004. The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on October 12, 2006.

The director's denial was based on his conclusion that the beneficiary's three-year bachelor of science degree from India was not a foreign equivalent degree to a four-year U.S. bachelor's degree in computer science, computer engineering or electrical engineering and failed to meet the requirements for classification as a professional.

The petitioner filed an appeal on October 18, 2007, asserting that the beneficiary's three-year Indian bachelor's degree is the equivalent to a U.S. bachelor's degree and satisfies the terms of the labor certification.

On July 16, 2008, the AAO issued a request for evidence from the petitioner asking for: 1) legible copies of the beneficiary's college transcript representing her third year of attendance; 2) a copy of the beneficiary's diploma from Dtech Computer School along with the corresponding transcript, evidence of accreditation by the AICTE and evidence of an admission requirement of a three-year bachelor's degree; 3) evidence that the beneficiary's Indian bachelor's degree was obtained in one of the three designated fields of study; and 4) copies of evidence of recruitment efforts, including correspondence, postings and advertisements that were submitted to the DOL in order to determine how the petitioner characterized the position to potential applicants.

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

As noted above, the ETA 750 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.
>
> * * *
>
> 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,* CV 04-1849-PK (D. Ore. Nov. 3, 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.

The instructions for the Form ETA 750A, item 14, provide:

> ***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

The key to determining the job qualifications is found on Form ETA-750 Part A. Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education (number of years)

Grade school	6
High school	6
College	4
College Degree Required	Bachelor's or equivalent
Major Field of Study	Computer Science, Computer Engineering or Electrical Engineering

Experience:

Job Offered	0
Related Occupation	0.

Block 15:

Other Special Requirements (none stated)

As set forth above, the proffered position requires four years of college culminating in a bachelor's degree in computer science, computer engineering or electrical engineering. No experience in the certified job is required and there are no other special requirements.

As shown on the ETA 750, the DOL assigned the occupational code and title of 15-1021, computer programmer. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database[3] most analogous to the certified position of junior programmer, 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

[3] http://online.onetcenter.org//link/summary/15-1021.00 (accessed December 11, 2008)
[4] http://online.onetcenter.org//link/summary/15-1021.00 (accessed December 11, 2008)

> 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 750 and the standardized occupational requirements as set forth above, the position will be considered under both the professional category and the skilled worker category. It is noted that while the skilled worker classification minimum requirements do not require that an applicant possess a baccalaureate degree to be classified as a skilled worker, the beneficiary must still meet the terms set forth on the labor certification. 8 C.F.R. § 204.5(l)(3)(B).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

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

(Emphasis added.)

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree 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.

As the record reflects, the beneficiary possesses a Bachelor of Science degree, awarded on January 12, 1997, from the Maharaja Sayajirao University of Baroda. Her grade transcripts indicate that this was a three-year course of study. A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). As shown on the transcripts, her major areas of study were botany, chemistry and zoology. The transcripts do not indicate that she took any classes in computer science, computer engineering or electrical engineering. No other acceptable fields of study were stated by the petitioner on the ETA 750.

It is noted that in response to the AAO's request for evidence, the petitioner provided a slightly more readable third-year transcript from the Maharaja Sayajirao University of Baroda, but the petitioner failed to provide a copy of the beneficiary's diploma from Dtech Computer School or any related

materials relating to this course of study. For this reason, this credential will no longer be considered as part of the review of the beneficiary's academic studies.[5]

In her response to the AAO's request for evidence counsel asserts that the "Recommendation on Criteria and Procedures for the Assessment of Foreign Qualifications" (adopted by the Lisbon Recognition Convention Committee at its second meeting, Riga, 6 June 2001), should be recognized. Counsel quotes a generalized statement from theses recommendations that length of study is not the only factor to be considered in equivalency determinations.

In support of the beneficiary's educational qualifications, counsel also submits a credential evaluation report, dated September 16, 2006, from [redacted] of Career Consulting International. A copy of this evaluation was resubmitted with the petitioner's response to the AAO's request for evidence. Counsel further provides an additional evaluation, dated September 15, 2006, from [redacted] of Marquess Educational Consultants, Ltd. (UK). Both the [redacted][6] and the [redacted] evaluation refer to the beneficiary's three-year bachelor's degree as reflecting 120 credit hours based on "contact hours" and deem the beneficiary's bachelor of science degree from Maharaja Sayajirao University of Baroda, to be equivalent to a U.S. bachelor of science degree from a regionally accredited institution of higher education in the United States. It is noted that neither of these evaluations addresses the absence of any courses relating to computer science, computer engineering, or electrical engineering. Neither of these evaluations state that the beneficiary's degree is in any field specifically listed on Form ETA 750, and in fact the evaluations do not designate that the beneficiary's degree is in any specific field. Rather, the evaluations only state that it is equivalent to a "Bachelor of Science" degree with no major field of study designated.

Moreover, the [redacted] evaluation refers to accelerated programs in the United States that permit a bachelor's degree to be completed in three years, not four, thus showing that a U.S. bachelor's program does not necessarily demand a four-year program. The AAO notes that programs that allow students to work at an accelerated pace do not establish that a typical three-year Indian degree is equivalent to a four-year baccalaureate U.S. degree or even an accelerated U.S. program.

Additionally, the Kersey evaluation contained several attachments including the cover pages and a few pages of *A P.I.E.R. Workshop Report on South Asia: The Admission and Placement of Students*

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[5] Additionally, Part B of the ETA 750 indicates that the beneficiary claims that this was a three-month course taken from June to September 1997.

[6] [redacted] indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from [redacted] but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr/index1.html, [redacted] awards degrees based on past experience. She further indicates that she is currently a professor at Marquess College in London where she oversees the standards for granting college level credit for experiential learning. Marquess College was initially formed by [redacted] having formerly been the University for Self-Empowerment. See www.the degree.org/interview/html.

from Bangladesh, India, Pakistan and Sri Lanka (1986) and the *P.I.E.R. World Education sSeries India: A Special Report on the Higher Education System and Guide to the Placement of Students in Educational Institutions in the United States (1997).* However, this submission was not supported by copies from either publication which determines that a three-year bachelor of science degree is the U.S. equivalent of a four-year bachelor of science degree. Rather *The Admission and Placement of Students from Bangladesh, India, Pakistan and Sri Lanka (1986)* indicates that a 12 + 3 years of academic study including a single bachelor of science degree in India may be considered to be the U.S. equivalent of up to three years (0-90 semester credits) to be determined on a course by course basis. It is further noted that information contained in the 1986 AACRAO[7] PIER publication, indicates that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. As with EDGE, this publication represents conclusions vetted by a team of experts rather than the opinion of an individual. In *A P.I.E.R. Workshop Report on South Asia* at p. 180, it explicitly states that "transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year."

Moreover, as advised in the request for evidence issued to the petitioner by this office, we have reviewed the EDGE database created by the AACRAO, and according to its website, www.aacrao.org, it 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://accraoedge.accrao.org/register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials." Authors for Edge are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at *www. Aacrao.org/publications/guide to creating international publications.pdf.* If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

In response to the request for evidence, counsel also supplies a letter dated January 7, 2003, from Efren Hernandez of the INS Office of Adjudications to counsel in other cases, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). He states that it is not the intent of the regulation that a "foreign equivalent degree" means that only a single foreign degree satisfy the equivalency requirement.

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[7] AACRAO stands for the American Association of Collegiate Registrars and Admissions Officers that sponsors an Electronic Database for Global Education (EDGE).

The AAO additionally notes that counsel has not offered first-hand documentation that the beneficiary has any additional degrees. The response to the AAO's request for a copy of the claimed three-month diploma from Dytech did not include this document. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

With regard to the two credential evaluations asserting that the beneficiary's three-year degree actually represents at least an equivalency in contact and credit hours to a four-year U.S. bachelor's degree as well as the 2002 recommendations issued in Riga in 2001 that were related to the Committee of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, the AAO does not find these opinions to be persuasive. The AAO does not find that this evidence supports a conclusion that the beneficiary's three-year degree from Mahaharaja Sayajirao University of Baroda, India is equivalent to a four-year U.S. Bachelor of Science degree or overcomes the evidence presented by EDGE or by the earlier 1986 P.I.E.R. publication that such a degree is not equivalent to a four-year U.S. bachelor of science degree. 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, the Service 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 private discussions and correspondence solicited to obtain advice from USCIS, such as [redacted]' letter, are not binding on the AAO or other USCIS adjudicators and do not have the force of law. *Matter of Izummi,* 22 I&N 169, 196-197 (Comm. 1968); *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). It is further noted that [redacted]' letter was focused on the interpretation of an advanced degree professional under 8 C.F.R. § 204.5(k)(2). Moreover, counsel has not submitted any persuasive evidence that the beneficiary's area of concentration was computer science, computer engineering or electrical engineering. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," she may not qualify as a professional under section 203(b)(3)(A)(ii) of the Act as she does not have the minimum level required for the equivalent of a bachelor's degree.

The beneficiary is also not eligible for qualification as a skilled worker under section 203(b)(3)(A)(i) of the Act. For this qualification, a beneficiary must meet the petitioner's requirements as stated on the labor certification in accordance with 8 C.F.R. § 204.5(l)(3)(ii)(B), which provides that:

> *Skilled Workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

In this case, even considering the petition under the skilled worker category, the beneficiary would not meet the requirements set forth on the ETA 750. The petitioner specified that a bachelor's or equivalent is required. The equivalency is not defined on the ETA 750. As discussed above, the beneficiary's degree from India is concluded to represent at most, the equivalent of three years of academic studies toward a U.S. bachelor's degree. Additionally, whether considered under either category, the beneficiary did not obtain a degree with any of the specified major fields of study. Her degree concentration was in botany, zoology and chemistry as reflected on her grade transcripts.

Moreover, the AAO's request for evidence asked for documentation of the petitioner's recruitment efforts conducted pursuant to the labor certification proceedings in order to determine whether its intent to accept some other defined equivalency may have been communicated to other applicants. The petitioner failed to provide any documentation relevant to this issue. Counsel asserts that because the ETA 750 did not prohibit a combination of lesser degrees, then it must be allowed. The Form ETA 750 does not provide that the minimum academic requirements of four years of college and a bachelor's or equivalent degree in computer science, computer engineering or electrical engineering might be met through a lesser degree or other defined equivalency.

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 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.

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. Further, the beneficiary does not meet the job requirements as stated on the labor certification, as also would be required for the petition's approval under the skilled worker category pursuant to 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.