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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

PUBLIC COPY

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 09 2009
LIN-07-120-54473

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The director found that the petitioner failed to document that the beneficiary had the required bachelor's degree as required by the certified ETA Form 9089 Application for Permanent Employment Certification (ETA Form 9089 or labor certification).

On appeal, counsel merely stated that: "Our brief and additional evidence will be submitted to the AAO within 30 days." Counsel did not submit any other correspondence or evidence with the appeal.

Counsel dated the appeal May 18, 2009. As of this date, more than three months later, the AAO has received nothing further.

The regulation at 8 C.F.R. § 103.3(a)(2) sets forth the following:

> (vi) *Brief.* The affected party may submit a brief with Form I–290B.
>
> (vii) *Additional time to submit a brief.* The affected party may make a written request to the [AAO] for additional time to submit a brief. The [AAO] may, for good cause shown, allow the affected party additional time to submit one.
>
> (viii) *Where to submit supporting brief if additional time is granted.* If the [AAO] grants additional time, the affected party shall submit the brief directly to the [AAO].

As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal.

Counsel here has not specifically addressed the reasons stated for denial and has not provided any additional evidence to overcome the basis for denial. He has not even expressed disagreement with the director's decision. The appeal must therefore be summarily dismissed.

Alternatively, even if the petitioner had articulated a basis for the appeal, the petitioner has clearly not overcome the director's decision.

The petitioner is a medical practice and seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, the petition was submitted with ETA Form 9089, Application for Permanent Employment Certification, approved by the

Department of Labor (DOL).[1] The director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification, and, therefore, the beneficiary did not meet the minimum qualifications as listed on ETA Form 9089.

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

The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner seeks to classify the beneficiary as a professional worker or skilled worker. The regulation at 8 C.F.R. § 204.5(l)(2), provides that a third preference category professional is a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." *See also* section 203(b)(3)(A)(ii) of the Act, which provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. Section 203(b)(3)(A)(i) of 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.

The petitioner must establish that its ETA Form 9089 job offer to the beneficiary is a realistic one. A petitioner's filing of an ETA Form 9089 labor certification application establishes a priority date for any immigrant petition later filed based on the approved ETA Form 9089. The priority date is the date that the ETA Form 9089 Application for Permanent Employment Certification was accepted for processing by any regional processing center of the Department of Labor. *See* 8 C.F.R. § 204.5(d). Therefore, the petitioner must establish that the job offer was realistic as of the priority date, and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential

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

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1).

element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2).

Here, the ETA Form 9089 was accepted for processing by the relevant office within the DOL employment system on December 13, 2006. DOL certified ETA Form 9089 on December 14, 2006. The petitioner filed the instant petition on Form I-140 on March 18, 2007.

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

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

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

The petitioner left this blank.

4-B. Major Field Study: Accounting or Business Administration with major in Accounting.*

*The petitioner submitted an amendment to DOL, dated February 19, 2007, that ETA Form 9089, Part H, 4.B should read "Accounting or Business Administration with course work in Accounting or foreign equivalent." As the labor certification was certified on December 14, 2006, it is not clear that DOL considered the petitioner's amendment.[3]

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

The petitioner checked "no" to this question.

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

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

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

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

9. Is a foreign educational equivalent acceptable?

[3] Regardless of whether the amendment is considered, the petitioner cannot establish that the beneficiary met the terms of the certified labor certification as set forth below.

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

6. Experience: None required.

10. Is experience in an alternate occupation acceptable?
The petitioner checked no.

14. Specific skills or other requirements: None listed.

On April 17, 2009, the director denied the petition on the basis that the petitioner failed to establish that the beneficiary met the qualifications of the certified labor certification. The petitioner did not establish that the beneficiary had the required Bachelor's degree or foreign equivalent degree in Accounting or Business Administration based on one program of study as required by the certified labor certification.

Specifically, the director considered the beneficiary's educational documents: a three-year Bachelor of Business Administration degree and transcripts from Sardar Patel University, India, as well as score reports from the Institute of Chartered Accountants of India (ICAI) and confirmation of passage of the Intermediate Exam with Certificate and score reports and Intermediate Exam Certificate from the Institute of Cost and Works Accountants of India (ICWAI). The director reviewed the three educational evaluations submitted: (1) Career Consulting International;[4] (2) Marquess Educational Consultants;[5] and (3) The

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who issued the evaluation on behalf of Career Consulting, indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure Robert de Sorbon but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr/index1.html, Ecole Superieure Robert de Sorbon awards degrees based on past experience.

Danzig's evaluation assigns U.S. credit hours to each of the beneficiary's courses to conclude that the beneficiary's three-year degree is equivalent to a four-year U.S. bachelor's degree. In doing so, she cites that the Indian degree program would have more "contact hours" of in-room class time than the U.S. system.

The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. [redacted] The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf, accessed May 28, 2009 and incorporated into the record of proceedings, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are

derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

[5] [redacted] of Marquess Educational Consultants has a canonical diploma of Sacrae Theologiae Professor, equivalent to a Doctorate of Divinity. Where an evaluation is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The evaluation references the United Nations Education Scientific and Cultural Organization (UNESCO) Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention on the recognition of qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same agreement. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. The United States was not a member of UNESCO between 1984 and 2002, and the Recommendation on the Recognition of Studies and Qualifications in Higher Education is not a binding legal agreement to recognize academic qualifications between UNESCO members. *See* http://www.unesco.org (accessed December 3, 2008).

Attached to the evaluation is 138 pages of UNESCO materials, only two of which are relevant. The relevant language relates to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

> 'Recognition" of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State and deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact,

the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

In fact, UNESCO's publication, "The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific" 82 (2d ed. 2004) (accessed on May 28, 2009 at http://unesdoc.unesco.org/images/0013/001388/138853E.pdf and incorporated into the record of proceedings), provides:

> Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. UGC, AICTE and AIU are developing criteria and mechanisms regarding the same.

Id. at 84. (Emphasis added.)

The evaluator finds further parallel in the Bologna process in the European Union where three-year first degrees are issued. The evaluation additionally cites to and attaches numerous documents, which provide theoretical arguments on why three-year degree should be accepted.

[redacted] also relies on an article he coauthored with [redacted] The record contains no evidence that this article was published in a peer-reviewed publication or anywhere other than the Internet. The article includes British colleges that accept three-year degrees for admission to graduate school but concedes that "a number of other universities" would not accept three-year degrees for admission to graduate school. Similarly, the article lists some U.S. universities that accept three-year degrees for admission to graduate school but acknowledges that others do not. In fact, the article concedes:

> None of the members of N.A.C.E.S. who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited

Trustforte Corporation. The first two evaluations stated that the beneficiary's three-year degree should be considered the equivalent of a four-year U.S. bachelor's degree in the required field. The director cited to *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977), that a United States baccalaureate degree is generally found to require four years of education. Further, 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); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

As the third evaluation from Trustforte combined the beneficiary's three-year degree with the beneficiary's ICAI certificate[6] to reach the equivalent of a bachelor's degree, the

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> institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so.
>
> In this process, we encountered a number of the objections to equivalency that have already been discussed.
>
> [redacted] President of Educational Credential Evaluators, Inc., commented thus,
>
> "Contrary to your statement, a degree from a three-year "Bologna Process" bachelor's degree program in Europe will NOT be accepted as a degree by the majority of universities in the United States. Similarly, the majority do not accept a bachelor's degree from a three-year program in India or any other country except England. England is a unique situation because of the specialized nature of Form VI."

Finally, these materials do not examine whether those few U.S. institutions that may accept a three-year degree for graduate admission do so on the condition that the holder of a three-year degree complete extra credits.

Additionally, [redacted] reliance on *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. Nov. 30, 2006) is equally troubling. In that case, the alien not only had a credential beyond a three-year degree, the judge determined that even with that extra credential, the alien was only eligible as a skilled worker pursuant to section 203(b)(3) of the Act, and *not* as either a professional or an advanced degree professional pursuant to section 203(b)(2) of the Act. *Id.*

[6] The Trustforte evaluation does not assess any separate or additional educational value for the ICWAI Intermediate Exam certificate. The record does contain evidence that the beneficiary took both sections of the ICWAI Final Examination, but failed the second

director found this evaluation to be in conflict with the Career Consulting International, and Marquess Educational Consultants Evaluations.

The director also cited to the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, http://aacraoedge.aacrao.org/register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials." The director informed the petitioner that completion of the ICAI Intermediate Examination would be comparable to one year of study. [7]

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part of that examination. Therefore, additional educational equivalency would not be accorded for the final examination. *See infra* n.7.

[7] EDGE further states regarding ICWAI final certification and the award of Associate Membership is:

> Awarded upon passing of Final Examination of the Institute and obtaining for a period of not less than three years of practical experience covering different branches of Costing or Industrial Accounting. The practical experience as above may be partly acquired prior to or after passing the Final Examination or partly before and partly after passing the final examination. The Associate Membership of the ICWAI is a professional qualification awarded upon passing the ICWAI Final Exam and meeting the requirements as stated above.

Additionally, EDGE states that passage of the ICWAI Final Exam and Association Membership would represent "attainment of a level of education comparable to a bachelor's degree in the United States."

As the beneficiary has not passed the final examination and obtained Associate membership, the Intermediate Certificate would not be equivalent independently to a U.S. bachelor's degree. Further, the ICWAI credential (or ICAI) is not based strictly on a four-year educational program, but instead relies on a combination of instruction, practical experience, and examinations. As such, neither an ICAI or ICWAI Associate Membership credential alone would meet the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(c) for classifying the petition and the beneficiary as a professional for employment based immigrant purposes as the category requires evidence of a bachelor's degree in the form of an official college or university record, as will be discussed further below.

The director also considered counsel's reliance on letters dated January 7, 2003 and July 23, 2003 from Efren Hernandez III of the INS Office of Adjudications to counsel in another case, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2). Within the July 2003 letter, Mr. Hernandez states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree.

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from USCIS 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 Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in Mr. Hernandez' correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. We do not find the determination of the credentials evaluations probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. at 245. 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.*

The petitioner appealed to the AAO and submitted no evidence to overcome or address the director's decision. As the petitioner required a "Bachelor's degree in Accounting or Business Administration with course work in Accounting or foreign equivalent," and did not allow for any alternate combinations of education on ETA Form 9089 in Part H., the petitioner must demonstrate that the beneficiary has one degree that is the foreign equivalent of a U.S. bachelor's degree. As the director notes, the petitioner's three educational evaluations are in conflict. The petitioner failed to address or overcome this inconsistency on appeal. The petitioner did not submit one degree that showed the beneficiary had four years of education resulting in a bachelor's degree. Additionally, the beneficiary's ICAI Intermediate Exam Certificate standing alone would not be equivalent to a single source U.S. bachelor's degree. Therefore, the petitioner cannot demonstrate that the beneficiary would meet the petitioner's educational requirements based on this credential alone.

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.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.[8]

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[8] 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).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required.

Accordingly, as the petitioner has failed to demonstrate that the beneficiary has a bachelor's degree based on one program of study, the petitioner cannot demonstrate that the beneficiary meets the terms of the certified labor certification.

Even if we considered the petition under the skilled worker category, the beneficiary would not meet the requirements of the certified ETA Form 9089.[9] As the petitioner specifies that a bachelor's degree, is required, and the certified ETA Form 9089 does not allow for meeting the degree requirement through any equivalency to a bachelor's degree, the beneficiary would not meet the qualifications listed on the certified ETA Form 9089. Therefore, the beneficiary cannot qualify as a skilled worker based on the certified ETA Form 9089.

Based on the foregoing, the petitioner failed to establish that the beneficiary met the qualifications of the certified labor certification. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

[9] 8 C.F.R. § 204.5(l)(3)(ii)(B) states:

> 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.