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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

B6

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date: **AUG 06 2010**

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:

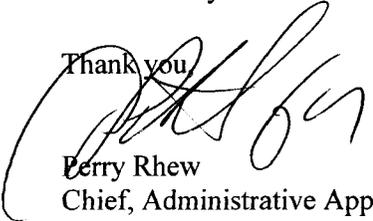
[REDACTED]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching your decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

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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 sustained. The petition will be approved.

The petitioner is a software consultancy firm. It seeks to employ the beneficiary permanently in the United States as a financial software consultant. A Form ETA 750, 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.

On appeal, the petitioner contends that the beneficiary's educational credentials satisfied the terms of the labor certification and that the petition should be approved.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

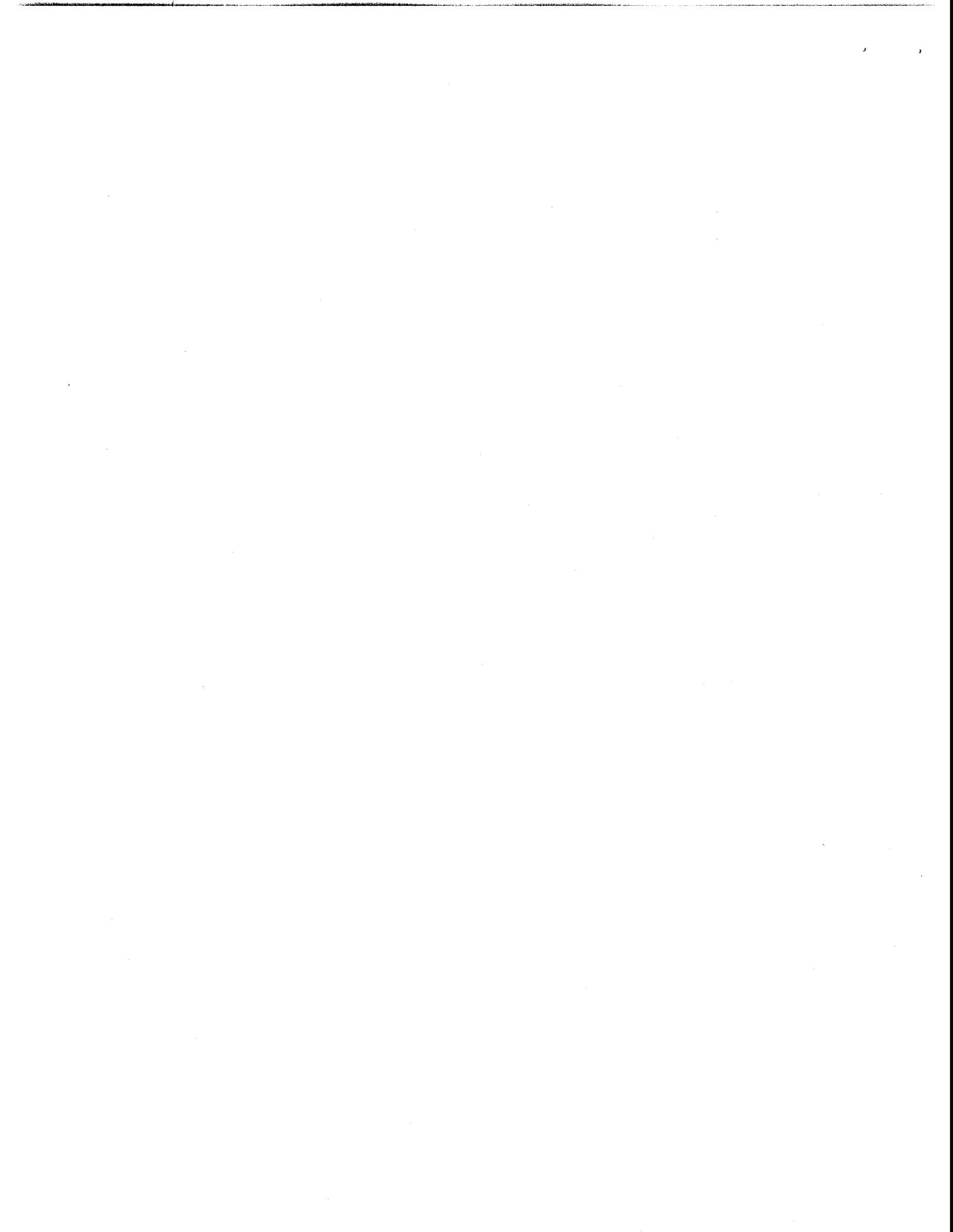
For the reasons discussed below, the AAO finds that the beneficiary's credentials satisfied the minimum level of education stated on the labor certification. Further, the AAO would also note that various decisions by federal circuit courts, which are binding on this office, have upheld our authority to evaluate whether the beneficiary is qualified for the job offered.

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.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date, the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on October 22, 2004. The visa preference petition was filed on February 22, 2007.

The job qualifications requirements are found on Form ETA 750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. It is important that the ETA 750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

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.

Regarding the certified job's title, duties and minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following:

Block 9: Name of Job Title

Financial Software Consultant

Block 13

Utilize accounting knowledge to translate business process into investran software configuration. Define, develop, test and implement conversion process/existing data to investran product. May require travel to client sites. May be eligible for telecommuting program.

Block 14: Minimum education, training, and experience

Education: (enter number of years)

Grade School	n/a
High School	n/a
College	*
College Degree Required (specify)	See Item 14 detailed in box
Major Field of Study	

Experience:

Job Offered	*
Related Occupation	See Item 14 detailed in box

Block 15 Other Special Requirements

14. Minimum requirements are a Bachelor of Science Business Administration or Bachelor of Business Administration with a concentration in Accounting or Finance (or foreign equivalent), venture capital/private equity industry knowledge & 4 years experience in accounting /auditing/finance.

In determining whether a beneficiary is eligible for a preference immigrant visa, United States Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a



labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, 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, but must recognize that the DOL sets the contents of the labor certification. *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, 1016; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

DOL assigned the occupational code of 15-1031, Software Consultant, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards.¹ According to DOL's public online database² and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See* <http://online.onetcenter.org/link/details/15-1031>, (accessed 06/04/10). 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.

Further, DOL notes that 85% of the respondents in this job hold a Bachelor's degree or higher level of education. On this basis, as well as the title of the certified job, its responsibilities as set forth in Part A of the approved labor certification, and its minimum SVP of 7-8 and educational requirements of a Bachelor of Science or Bachelor of Business Administration with a concentration in accounting or finance, the job will be considered as a professional position.

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

¹*See* 15-1031.00, Computer Software Engineers, Applications, <http://online.onetcenter.org/link/summary/15-1031.00> (accessed 06/04/10).

²*See* <http://online.onetcenter.org/link/summary/15-1031.00> (accessed 06/04/10).



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.

As noted above, the ETA 750 in this matter is certified by DOL. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

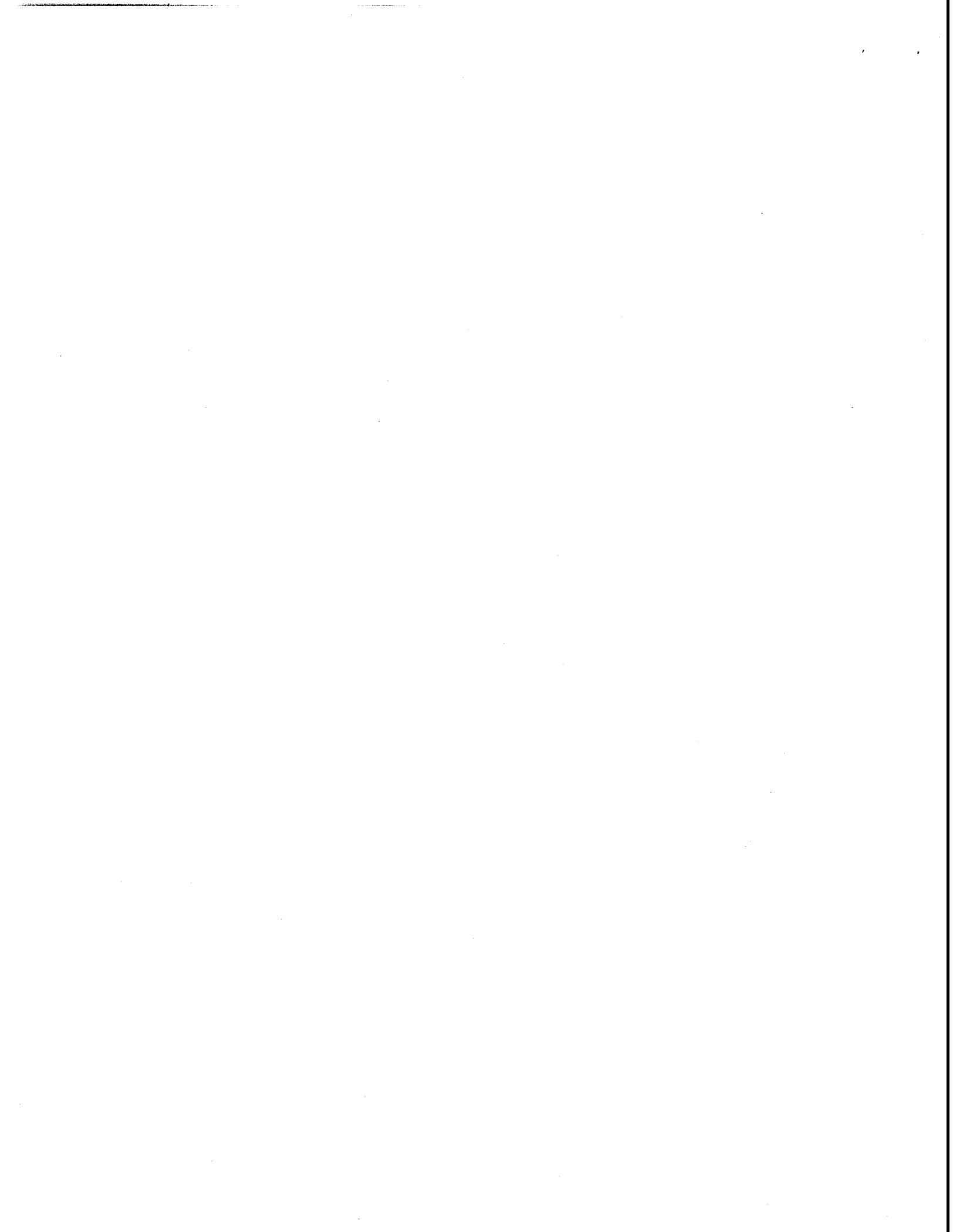
(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

According to 20 C.F.R. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

Under § 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.



It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14). *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.

* * *

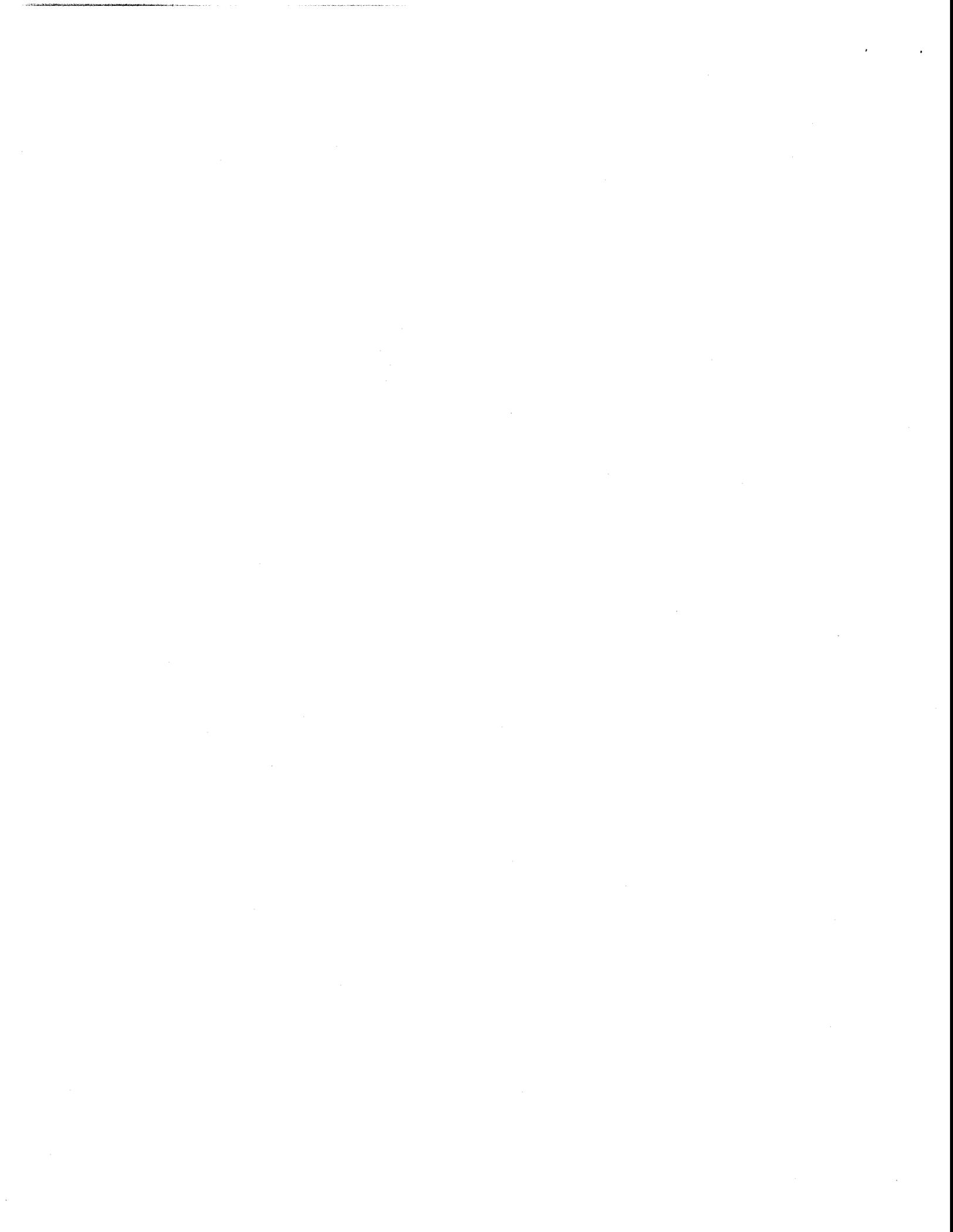
Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is 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). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the*



certified job opportunity is qualified (or not qualified) to perform the duties of that job.

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a *de novo* determination of whether the alien is in fact qualified to fill the certified job offer.

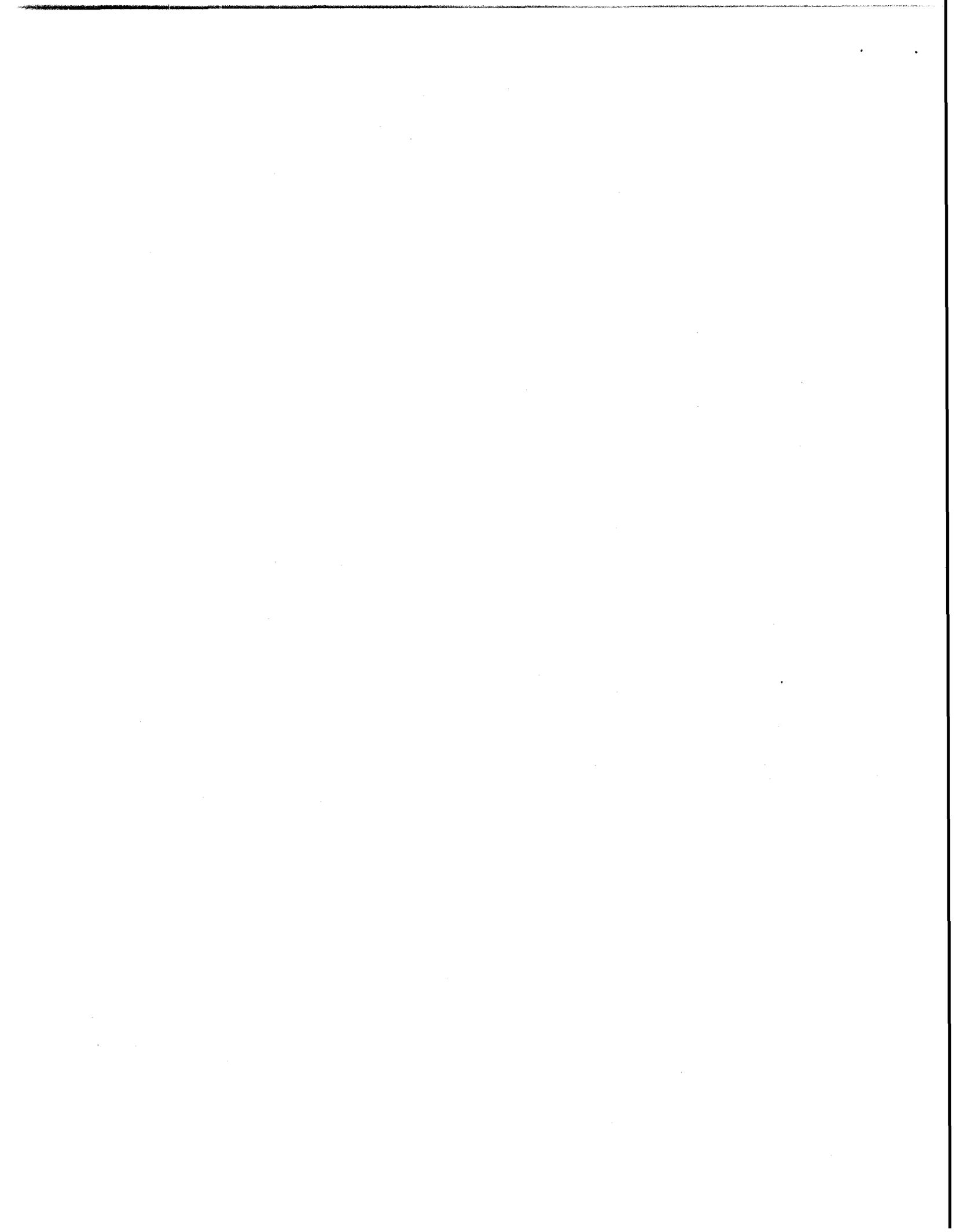
Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

In this matter, the issues are how the minimum educational requirements as set forth on the ETA 750 should be interpreted and whether the beneficiary possesses the necessary academic credentials.

The beneficiary's educational credentials consisted of a diploma from [REDACTED] indicating that he received a Bachelor of Accountancy in June 1995 following a three-year academic program consisting primarily of business courses and accounting courses. The record indicates that the beneficiary also had upper secondary courses in the [REDACTED] advanced level at [REDACTED]. Transcripts for each institution have been provided.

In support of the beneficiary's educational credentials from [REDACTED] the petitioner submitted copies of two credential evaluations. A credential evaluation report from the [REDACTED] July 18, 2000 indicated that the beneficiary's three advanced level of subjects within the [REDACTED] Examination of 1989 at [REDACTED] represent the equivalent of 30 semester units of U.S. undergraduate credit and were the prerequisite for admission to [REDACTED] where the beneficiary completed his Bachelor of Accounting degree in 1995. The evaluation concludes that the beneficiary's Bachelor of Accounting degree is equivalent to a Bachelor of Business Administration degree concentrated in Accounting awarded by a regionally accredited institution in the U.S.

The petitioner also submitted another credentials evaluation from [REDACTED] dated August 9, 2007. This evaluation does not mention the beneficiary's completion of studies at [REDACTED] but states that he completed post-secondary academic studies and that his studies at [REDACTED]



represented cumulatively the U.S. equivalent of a Bachelor of Science in Accounting.

As noted above, the director determined that the beneficiary's educational credentials failed to satisfy the terms of the ETA 750 in that his three-year bachelor's degree was not the equivalent of a U.S. baccalaurate.

On appeal, counsel disagrees and asserts that the director should have considered the beneficiary for a skilled worker visa as well. Counsel also provides a letter from an assistant professor at dated February 22, 2008. states that the system is similar to the British system in which students complete preliminary bachelor-level studies in junior colleges or pre-university centers culminating in examinations. The beneficiary's preliminary bachelor-level studies culminated in his passage of the advanced level studies in economics, mathematics and physics. The A-level studies encompass one year of preliminary bachelor's level studies in core liberal arts subjects, reducing the standard duration of bachelors' programs in to three years.

Courts have reached different conclusions relevant to the interpretation of what is a foreign equivalent degree to a U.S. bachelors's. The court in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), found that 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." However, 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. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church* at *8 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since CIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a). In reaching this decision, the court also concluded that the employer in that case tailored the job requirements to the employee and that DOL would have considered the beneficiary's credentials in evaluating the job requirements listed on the labor certification.³

³ Specifically, as quoted above, the regulation at 20 C.F.R. § 656.21(b)(6) requires the employer to "clearly document . . . that all U.S. workers who applied for the position were rejected for lawful job related reasons." BALCA has held that an employer cannot simply reject a U.S. worker that meets the minimum requirements specified on the Form ETA-750. *See American Café*, 1990 INA 26 (BALCA 1991), *Fritz Garage*, 1988 INA 98 (BALCA 1988), and *Vanguard Jewelry Corp.* 1988

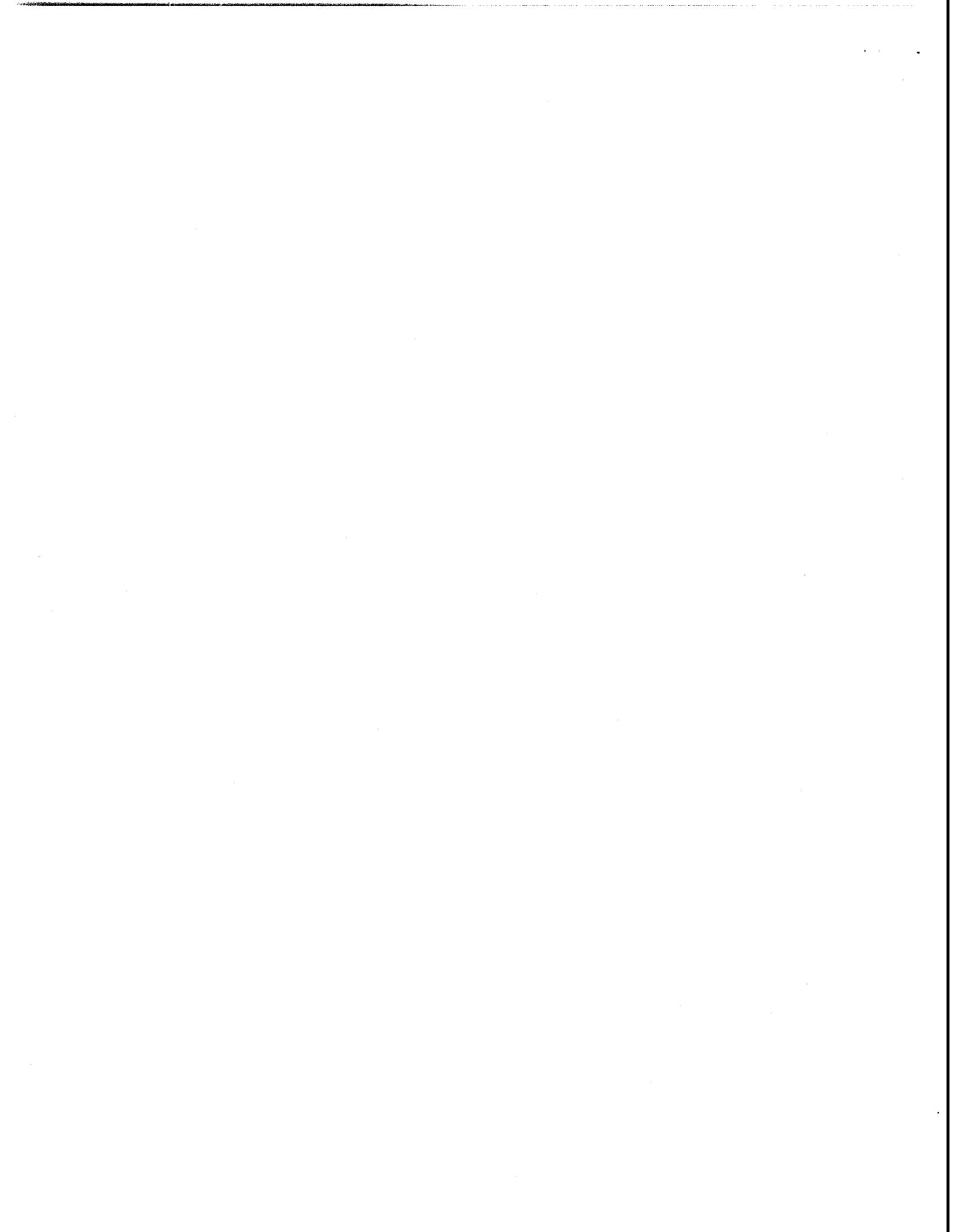


Additionally, we also note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, CV 06-65-MO (D. Ore. November 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the

INA 273 (BALCA 1988). Thus, the court's suggestion in *Grace Korean* that the employer tailored the job requirements to the alien instead of the job offered actually implies that the recruitment was unlawful. If, in fact, DOL is looking at whether the job requirements are unduly restrictive and whether U.S. applicants met the job requirements on the Form ETA 750, instead of whether the alien meets them, it becomes immediately relevant whether DOL considers "B.A. or equivalent" to require a U.S. bachelor degree or a foreign degree that is equivalent to a U.S. bachelor's degree. We are satisfied that DOL's interpretation matches our own. In reaching this conclusion, we rely on the reasoning articulated in *Hong Video Technology*, 1998 INA 202 (BALCA 2001). That case involved a labor certification that required a "B.S. or equivalent." The Certifying Officer questioned this requirement as the correct minimum for the job as the alien did not possess a Bachelor of Science degree. In rebuttal, the employer's attorney asserted that the beneficiary had the equivalent of a Bachelor of Science degree as demonstrated through a combination of work experience and formal education. The Certifying Officer concluded that "a combination of education and experience to meet educational requirements is unacceptable as it is unfavorable to U.S. workers." BALCA concluded:

We have held in *Francis Kellogg, et als.*, 94-INA-465, 94 INA-544, 95-INA-68 (Feb. 2, 1998 (en banc) that where, as here, the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chose to list alternative job requirements, the employer's alternative requirements are unlawfully tailored to the alien's qualifications, in violation of [20 C.F.R.] § 656.21(b)(5), unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable. Therefore, the employer's alternative requirements are unlawfully tailored to the alien's qualifications, in violation of [20 C.F.R.] § 65[6].21(b)(5).

In as much as Employer's stated minimum requirement was a "B.S. or equivalent" degree in Electronic Technology or Education Technology and the Alien did not meet that requirement, labor certification was properly denied.



court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19.

The certified position in this case will be considered in the professional category because the DOL occupational designation, SVP classification and information relating to the number of holders of bachelor's degrees in the occupation support the position as a professional position. Further, the minimum educational requirements, job title, and job responsibilities as described on the ETA 750, support this designation.

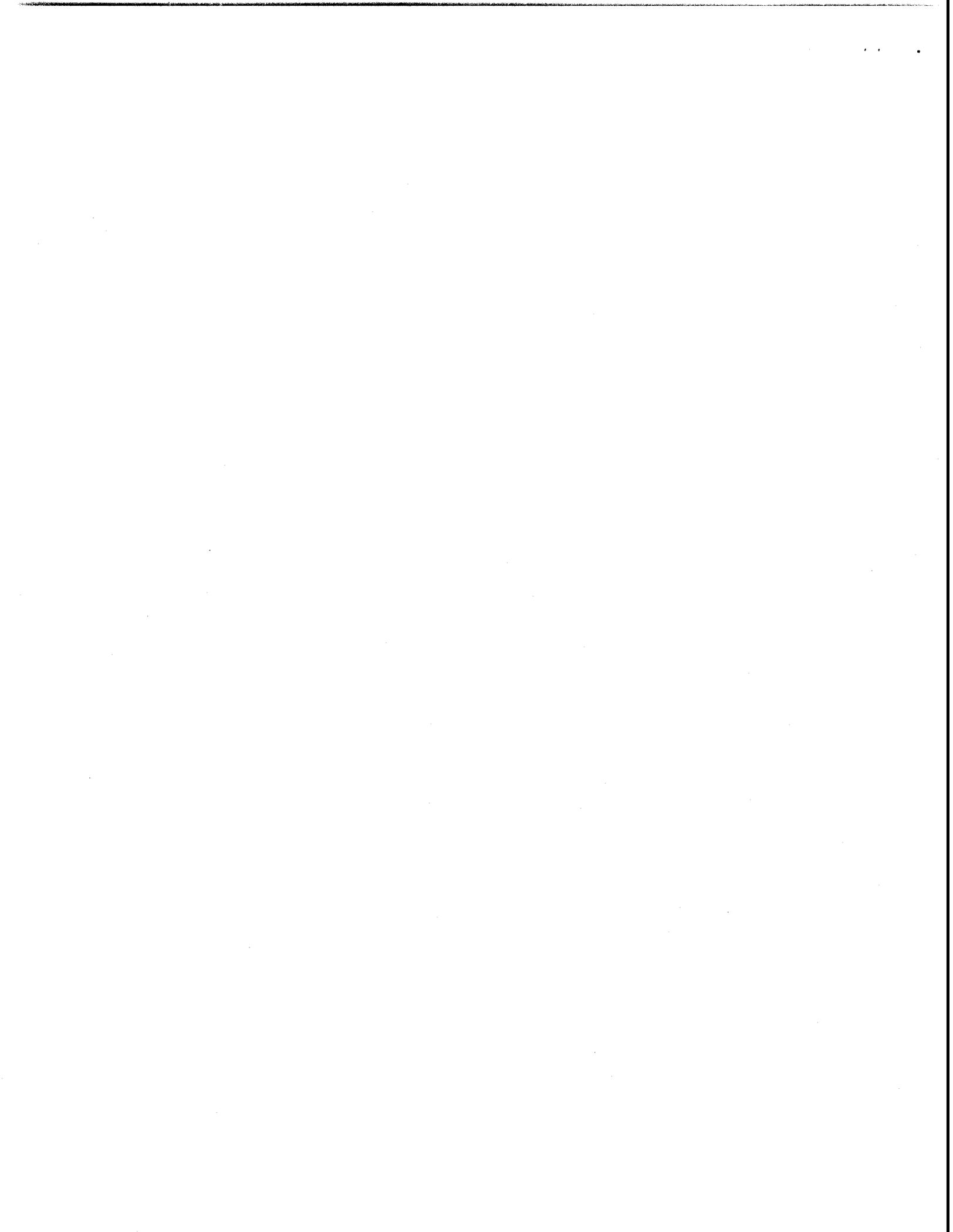
This office has also reviewed the credentials information in the [REDACTED] created by the [REDACTED] according to its website, [REDACTED]

[REDACTED] 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 [REDACTED]

Authors for [REDACTED] are not merely expressing their personal opinions. Rather, authors for [REDACTED] must work with a publication consultant and a Council Liaison with [REDACTED] on the [REDACTED] available for download at [REDACTED] 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 this matter, although [REDACTED] does not contain specific information related to a bachelor's in accountancy, [REDACTED] does concur with [REDACTED] explanation relevant to the [REDACTED] educational system in that bachelor's degrees require three to five years of study; "with admission predicated on the GCE "A" level results with bachelors degrees requiring a minimum of sixteen (thirteen plus three) years of education." [REDACTED] also indicates that a bachelor of arts or bachelor of science in [REDACTED] represents the attainment of education comparable to a bachelor's degree in the United States.

In this matter following a review of the beneficiary's credentials, transcripts, and the documentation submitted to the record, it may be concluded that his Bachelor's in Accountancy including the courses taken in business, assessed to be the foreign equivalent of a Bachelor of Science degree concentrated in Accounting, or a Bachelor of Business Administration concentrated in Accounting, sufficiently satisfy the terms of the labor certification in fulfilling the requirement of a Bachelor of Science Business Administration with a concentration in Accounting or a Bachelor of Business Administration with a concentration in Accounting. Therefore, his baccalaureate credential



represents a single degree which satisfies the requirements of the ETA 750 and the regulation under section 8 C.F.R. § 204.5(l)(3)(ii)(C).

The beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," and, thus, qualifies for preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.

