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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] Offices: NEBRASKA SERVICE CENTER Date: AUG 0 9 2010

IN RE: [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 our 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

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 company that manufactures and sells video surveillance and recording equipment. It seeks to employ the beneficiary permanently in the United States as a sales manager. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.[1] Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).[2]

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. 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 record does not reflect that the petitioner intended the instant petition to be considered under the professional classification.[3] Thus, the AAO will consider the petition for the skilled worker classification.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N

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[1] On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 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 Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[3] The petitioner, in fact, submitted a letter to the record dated December 5, 2008, clarifying that the proffered position was for the skilled worker category.

158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on August 30, 2006.[4] The Immigrant Petition for Alien Worker (Form I-140) was filed on April 4, 2007.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, 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.

On the ETA Form 9089, the "job offer" position description for a sales manager provides:

> Responsible for managing the sales and marketing of the company and of the development and implementation of sales and marketing programs. Must have knowledge of SAVS and CODEC.

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: Associate's Degree.

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

4-B. Major Field Study: Engineering.

7. Is there an alternate field of study that is acceptable.

The petitioner checked "no" to this question.

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

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[4] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

The petitioner checked "no" to this question.

9. Is a foreign educational equivalent acceptable?

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

H-6. Experience: 24 months experience in the position.

14. Specific skills or other requirements: Blank.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. 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. *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).

As set forth above, the proffered position requires an associate's degree in engineering with two years of experience in the job offered.

On the ETA Form 9089, signed by the beneficiary, the beneficiary represented that the highest level of achieved education related to the requested occupation was an Associate's degree in electrical engineering. He listed the institution of study where that education was obtained as East London Technical College and the year completed as 1988. The Form ETA 9089 also reflects the beneficiary's experience as follows:

Employer	Job Title	Dates of Employment
[redacted][5]	General Manager	October 15, 2002 to August 30, 2006
	Regional Director/Sales	March 1, 2000 to October 1, 2002

[5] The record also contains a letter of verification dated November 29, 2006 signed by [redacted], that states the beneficiary also worked with [redacted] as a sales and marketing director from 2001 to November 2002. An additional letter of work verification dated September 6, 2002 from WFS Ltd, South Africa, notes the service received from [redacted]. This letters states that both [redacted] and [redacted] were both represented by the beneficiary. The ETA Form 9089 does not describe any employment with [redacted]. The record also contains the beneficiary's resume that notes his employment from March 2003 to July 2003 with Security Signal Devices, SSD

Manager

The AAO finds sufficient evidence in the record that the beneficiary has more than two years of work experience as a Sales Manager, and will address this issue no further in these proceedings.

In support of the beneficiary's educational qualifications, in response to the director's RFE dated February 4, 2009, the petitioner submitted a copy of an educational equivalency report written by [redacted] Industrial Management Program, dated July 21, 2003. [redacted] examines the beneficiary's employment history and determined that the beneficiary completed more than twelve years of progressively responsible work experience in engineering management and related areas. He then used the equivalency ratio utilized in H-1B visa petitions for three years of work experience to one year of college level studies to determine that the beneficiary's work experience were comparable to bachelor's level training in engineering management, and that the beneficiary had attained the equivalent of a bachelor of science degree in engineering management from an accredited U.S. institution f higher education.

The petitioner also submitted copies of the following documents:

> Senior Certificate awarded to the beneficiary on January 1, 19986 that indicates studies in English Afrikaans, mathematics, physical science, technical training and electrician work;
>
> Two documents from the South African Department of Education and Culture awarded to the beneficiary for subjects passed in the N4, and N5 program of studies. The N 4 document reflects courses in electrotechnics, industrial electronics, digital electronics, and mathematics and was awarded on January 13, 1988. The N-5 document reflects coursework in electrotechnics, digital electronics, and mathematics, and is awarded as of January 8, 1989; and
>
> A document from the Republic of South Africa Department of Manpower, dated July 17, 1990 that states the beneficiary passed a qualifying test in the trade/occupation of millwright;

The director denied the petition on July 14, 2009. He determined that [redacted] evaluation of the beneficiary's work experience did not establish that the beneficiary had the equivalent of a U.S. bachelor's degree, and that there was no provision in the EB2 statute or regulations that would allow a third preference professional beneficiary to qualify using work experience, training, or a combination of lesser degrees in conjunction with education less than a full baccalaureate degree as the minimum level of education. The director also noted that because the evidence did not establish that the beneficiary held an associate's degree as of the 2006 priority date, he also did not meet the minimum requirements stipulated on the ETA 9089.

Systems, Anaheim, California.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel submits the following evidence:

> An educational equivalency report dated August 12, 2009, written by [redacted] from Educational Perspectives. Mr. [redacted] examines the beneficiary's senior certificate issued in 1986, the beneficiary's senior certificate, the beneficiary's National N-4 and N-5 certificates, the beneficiary's certificate issued in 1990 from the Department of Manpower for what Mr. [redacted] describes as four years of studies, and the beneficiary's academic record from East London Technical College for studies in 1994. With regard to this last credential, Mr. [redacted] states that the beneficiary was enrolled in a program leading to a National Diploma. With regard to equivalency to U.S. studies, Mr. [redacted] states that the beneficiary's studies based on these documents established the U.S. equivalency of a high school diploma, two years of undergraduate study in Electrical Engineering Technology and Production Management, and four years of vocational training in machinery at a regionally accredited institution;
>
> A document entitled Buffalo City Public FET College Statement of Results. This document lists the beneficiary's studies for a program identified as N4 and N5 Engineering, with what appears to be examination dates of November 1988 and August 1989 respectively. The document states that N-4 consisted of a 12 week trimester, and N-5 consisted of a 12 week trimester. On page two, the document outlines the beneficiary's studies for the National Diploma: production Manager-PE Technician at East London Technical College. Four courses are listed and include Personnel Function, Production Management Techniques II, Production Management Techniques III, and Production management 1. The document notes that the production management subjects were two three hour classes held once a week for a y months period, and that the total hours for the 12 month period of six hours per week times 48 weeks equaled 288 total hours. This document has a place for the signature of the examinations officer, but is unsigned.

The petitioner resubmits the beneficiary's Senior Certificate, the beneficiary's certificate from the Department of Manpower, and the Beneficiary's N5 Studies document, as well as a copy of a document entitled National Certificate N4, which appears to be the same as the Department of Education and Culture document submitted previously but with a legible title. The petitioner also submits a document with letterhead PE Technikon East London Campus dated July 26, 1995. This document is entitled Full Academic Record and identifies the beneficiary's qualification as the National Diploma: Production Management, for 1994 and lists five courses, with final marks for four courses noted.[6]

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[6] The courses are the same as those listed on the Buffalo City Public FET College.

The petitioner also submits a document entitled "Trade: Millwright (24) that lists 23 classes, practical training and recommended instruction time per class of work in hours. The highest time per class of work in hours is for Course 21, Circuitry, that has a recommendation of 1,395 hours. The petitioner also submits a document entitled "Trade Test Report" from the Central Organization for Trade Testing. that records seven classes in the industry of metal and the grades received by the beneficiary in each class;

The petitioner also submits a letter from Dr. [redacted] Dean School of Apprenticeship, Aviation & Technical Specialties, and Mr. [redacted] Director, Apprenticeship Salt Lake Community College. Dr. [redacted] states that the competencies required in the beneficiary's [millwright] program in South Africa are the same as the competencies required in the Salt Lake Community College's Millwright Apprenticeship program, and that Mr. [redacted] concurs that the competencies are consistent. The petitioner submitted a copy of the Salt Lake Community College General Catalog for the 2009-2010 outlined the coursework for the Associate of Applied Science in Apprenticeship/Millwrights Technology, along with proposals dated December 29,2000 for new academic degree programs in such areas as Associate of Applied Science in areas such as Facilities Maintenance, Heating, Ventilating and Air Conditioning, and Mechanic, gas and electric vehicles, among others. The petitioner also submits a comparative evaluation of the Millwrights Trade, electromechanician including Associate of Applied Science Degree from the Department of Manpower, South Africa, Delta College, Ivy Community College of Indiana, and Salt Lake Community Center Mr. [redacted] description of the South African Department of Manpower programs is divided into the credits for Per-Apprenticeship Skilled Trades Electrical Certificate, Apprenticeship 4 year Course, and the General Education Course.[7]

Finally, the petitioner submits an email to counsel from [redacted] Mr. [redacted] states that with regard to the evaluation report the company is preparing for the beneficiary, the evaluation company ahs written to the Department of Labor, formerly known as the Department of Manpower, in South Africa regarding the beneficiary's Trade Certificate issued in 1991, and have not received any useful information from them. Mr. [redacted] adds that it was suggested to the beneficiary that a work-experience evaluation may be called for.

Part F of the ETA 9089 indicates that the DOL assigned the occupational code of 11-2022.00 and title of sales manager, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at http://online.onetcenter.org/crosswalk(accessed June 15, 2010) and its description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four.

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[7] Based on the coursework listed on this document, and the coursework documented on the beneficiary's Department of Manpower certificate, the beneficiary appears to have participated in the General Education course, rather than the four year apprenticeship course.

According to DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. DOL assigns a standard vocational preparation (SVP) range of 7-8 to Job Zone 4 occupations, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See* http://online.onetcenter.org/link/summary/*11-2022.00* (accessed June 16, 2010). 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.

The DOL adds: "Many of these occupations involve coordinating, supervising, managing, or training others. Examples include accountants, sales managers, database administrators, teachers, chemists, environmental engineers, criminal investigators, and special agents."

See id.

The DOL Occupational Outlook Handbook also examines the position of sales manager with regard to educational background. It states:

> A wide range of educational backgrounds is suitable for entry into advertising, marketing, promotions, public relations, and sales manager jobs, but many employers prefer college graduates with experience in related occupations.
>
> ***Education and training.*** For marketing, sales, and promotions management positions, employers often prefer a bachelor's or master's degree in business administration with an emphasis on marketing. Courses in business law, management, economics, accounting, finance, mathematics, and statistics are advantageous. In addition, the completion of an internship while the candidate is in school is highly recommended. In highly technical industries, such as computer and electronics manufacturing, a bachelor's degree in engineering or science, combined with a master's degree in business administration, is preferred.

Because of the requirements of the proffered position and DOL's standard occupational requirements, the proffered position is for a professional, but might also be considered under the skilled worker category.

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 regulation uses 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.

The regulation at 8 C.F.R. 204(5)(l)(3)(ii)(B) states the following:

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

The above regulation requires that the alien meet the requirements of the labor certification.

Because the petition's proffered position qualifies for consideration under both the professional and skilled worker categories, the AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional category. The AAO notes that in an initial RFE dated November 7, 2008, the director asked the petitioner to clarify whether it was filing the petitioner under the professional or skilled worker classification. On December 5, 2008, the petitioner stated that the petition should be considered under the skilled worker classification. Thus, the AAO will only briefly discuss the regulatory requirements for the professional classification.

Initially, however, we will provide an explanation of the general process of procuring an employment-based immigrant visa and the roles and respective authority of both agencies involved.

As noted above, the Form ETA 9089 in this matter is certified by DOL. Thus, at the outset, it is useful to discuss 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.

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 the position and the alien are qualified for a specific immigrant classification. 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).[8] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> * * *
>
> 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.

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[8] Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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).

Therefore, it is DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of U.S. Citizenship and Immigration Services (USCIS) to determine if the petition and the alien beneficiary are eligible for the classification sought.

Professional Classification

For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien had a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.)

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or 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).

Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289m 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement in of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate degree, we would not consider education earned at an institution other than a college or university.

Based on the initial academic equivalency report by Mr. [redacted], the petitioner in this matter relies on the beneficiary's work experience to reach the "equivalent" of a degree, which is not a bachelor's degree based on a single degree in the required field listed on the certified labor certification.

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 beneficiary's extensive work experience will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree.[9] Where the analysis of the beneficiary's credentials relies on a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "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.

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[9] As noted by the director, the [redacted] evaluation used an equivalence to determine that three years of experience equaled one year of college to conclude that the beneficiary had achieved the equivalent of a U.S. four–year bachelor's degree in engineering management, but that regulatory-prescribed equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(*5*).

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," from a college or university in the required field of study listed on the certified labor certification, 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 for the equivalent of a bachelor's degree. In this matter, the Form ETA 9089 does not require a four year baccalaureate degree or specify an equivalency to a college degree of any length.

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 petitioner must demonstrate about the beneficiary's qualifications. *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.

Skilled Worker Classification

With regard to whether the beneficiary qualifies for preference visa classification under the section 203(b)(3)(A)(ii) as a skilled worker, the AAO must go back to the terms stipulated on the ETA Form 9089. 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).

The ETA Form 9089, as previously stated, requires an associate's degree in engineering and two years of work experience as a Sales Manager. The evidence on the record establishes that the beneficiary has significant work experience as a Sales Manager as of the 2006 priority date. Thus, the only issue to be examined is whether the beneficiary possessed an associate's degree in engineering as of the 2006 priority date.

On appeal, the petitioner submits Mr. [redacted] evaluation that equates the beneficiary's academic and vocational training to a U.S. high school diploma, two years of undergraduate study in electrical engineering technology and production management, and four years of vocational training in machinery at a regionally accredited institution. The evaluator does not state that the beneficiary's studies are the equivalent of an associate's degree in engineering from an accredited U.S. institution.

The AAO would also question how the evaluator arrived at the figure of two years of undergraduate study in electrical engineering technology and production management and four years of vocational training in machinery. The document from Buffalo City Public FET College appears to establish the beneficiary's N4 and N5 studies were for one trimester each, and that the Production Manager-PE Technikon studies were for twelve months period of time.

With regard to the beneficiary's studies with the Department of Manpower for which he received a certificate in 1990, Mr. [redacted] described these studies as four years in length; however, the record does not establish that that the beneficiary studied for four years. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The AAO notes that Mr. [redacted] evaluation does shed some light on the equivalency of the beneficiary's post-secondary studies to U.S. post-secondary studies, but does not state any specific equivalency. Thus, the AAO would give only limited weight to this document.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[10] 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." 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.

EDGE has extensive information on the educational system in South Africa and also discusses the post secondary educational system after the end of apartheid in the 1990s. The AAO notes that the

[10] In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

beneficiary's studies in South Africa were undertaken prior to any changes in the educational system. (EDGE excerpts are included in the proceedings.)

With regard to the beneficiary's Senior Certificate document submitted to the record, EDGE states the following: "The Senior Certificate represents attainment of a level of education comparable to completion of senior high school in the United States"

With regard to FET colleges, EDGE describes the government system and the "publicly-funded "further education and training (FET) sector as intended to meet the country's serious skills shortage, keep abreast with modern technology, and encourage continuing education."

EDGE also discusses universities and universities of technology that it says were formerly known as technikons. EDGE states that the former describes a traditional academic and research based institution while the university of technology more directly develops technical and vocational job skills. EDGE also states that the universities of technology (technikons) as autonomous are subsidized by the Department of Education, and provide training at the post-Senior Certificate. EDGE does not speak to N-4 and N-5 Certificates but indicates on the education ladder for South Africa that National Technical Certificates (N1), (N2), and (N3) are vocational studies undertaken at the senior secondary school level.[11]

With regard to the National Diploma credential, EDGE states that this credential is awarded after completion of 2-3 years of study at a technikon or private higher education institution." EDGE further states that the "National Diploma represents attainment of a level of education comparable to 2-3 years of university study in the United States. Credit may be awarded on a course-by-course basis." As previously stated, the beneficiary appeared to have been enrolled in a National Diploma program at the East London Technical College, but the record does not establish that the beneficiary completed two to three years of study at a technikon, or that he received his National Diploma.[12]

With regard to the National Certificate, EDGE states that the national certificate is awarded after completion of one year of study at a technikon, and that the National Certificate represents attainment of a level of education comparable to one year of university study in the United States. Credit may be awarded on a course-by-course basis." It also notes that entry requirement is a Senior Certificate or a National Technical Certificate (N3).

The breakout of comparative millwright studies provided by Mr. [redacted] Salt Lake City Community

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[11] If the N-4 and N-5 are post-secondary studies, as stated on the Buffalo City Public FET College document, they consisted of two 12 week trimesters, or six months of post secondary studies Mr. [redacted] described the length of these two programs as one semester each.

[12] Further, as previously stated, the beneficiary's certificate in the millwright program that states he passed a qualifying test in the millwright occupation was dated July 17, 1990. Therefore any studies undertaken in this program would have been prior to this date. The AAO notes that the beneficiary represents that he received an Associate degree in engineering in 1988, which adds further inconsistency to the record.

College, indicates that the South African Department of Manpower course provides classes identified as NTC4 and NTC5 in the General Studies Course program in the same areas listed on the beneficiary's N4 and N5 certificates. It also lists the same classes identified on the Technikon documents. The breakout states that the Millwright General Studies Course provides 37 credits.

The record establishes that the beneficiary did pursue further studies after completion of his secondary education; however, the length of this post-secondary education is not clearly established in the record. As stated previously, the beneficiary appears to have graduated from high school, to have taken two post-secondary National Certificate courses for one trimester each that ostensibly appears to be part of the Department of Manpower millwright program, and then attended classes at a technikon level for one year in a National Diploma program. He then passed an exam for the millwright profession based on the testing of his skills. There is no evidence in the record that the beneficiary finished his National Diploma studies or had the equivalent of two or three years of university level studies at an accredited U.S. college or university.

Further, the while the petitioner claims that the beneficiary's studies in the millwright program are consistent with U.S. associate of applied sciences degree, the regulations provide no guidance as to any equivalency of studies that may be equivalent to an Associate's Degree. Further the record is not clear that the program of studies for the millwright certificate is equivalent to an Associate's degree in engineering. The AAO notes that the petitioner specifically identified the field of studies as engineering on the ETA Form 9089. The AAO does not find that the petitioner has clearly established that the beneficiary has an Associate's degree in engineering. Thus the petitioner has not established that the beneficiary is qualified for the visa preference classification.

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.