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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

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 11 2010

EAC 06 021 50472

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont 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 transportation firm. It seeks to employ the beneficiary permanently in the United States as a district manager. As required by statute, a Form ETA 750,[1] Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

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

Section 203(b)(3)(A)(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.

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 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on June 20, 2001.[2] The Immigrant Petition for Alien Worker (Form I-140) was filed on October 25, 2005.

The job qualifications for the certified position of district manager are found on Form ETA 750 Part A. Item 13 describes the job duties to be performed as follows:

> To be responsible for the directing and planning of business strategies for district New York office to maintain and enhance a profitable operation, direct, hire and oversee

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[1] After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004).

[2] 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.

personnel changes or problems, planning and analyzing of global logistic requirements and maintain relations with customers worldwide.

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

Block 14:

Education (number of years)

Grade school	
High school	
College	4
College Degree Required	Bachelor or its equivalence
Major Field of Study	(none listed)

Experience:

Job Offered	1 yr.
(or)	
Related Occupation	

Block 15:

Other Special Requirements Applicant must be fluent in Mandarin Chinese.

As set forth above, the proffered position requires four years of college culminating in a Bachelor's degree or its equivalence and one year of experience in the job offered.

On the Form ETA 750B, signed by the beneficiary, the beneficiary states that he received a certificate based on his attendance at the National Taichung Institute of Commerce, Taichung, Taiwan from September 1982 to July 1987, majoring in foreign languages for business. He also states that he attended San Francisco State University from September 1994 to December 1994 and studied business administration.

In support of the beneficiary's educational qualifications, the record contains a copy of the beneficiary's diploma from the National Taichung Institute of Commerce in Taiwan indicating that the beneficiary completed a course in Foreign Languages for Business Department in June 1987. The diploma further indicates that the institute is accredited by the Ministry of Education. The ETA 750 B, signed by the beneficiary on May 18, 2001, claims that he attended from September 1982 to July 1987. The petitioner, through counsel provided in its response to the AAO's request for additional evidence a copy of the beneficiary's transcript of record (in English) of his attendance at the National Taichung Institute of Technology. It indicates that it is accredited by the Ministry of

Education, Taiwan, that the five-year program is offered to junior high graduates and that an associate's degree will be conferred upon the completion of the program.[3]

It is noted that you provided a copy of an evaluation report, dated January 13, 2000, from the Foundation for International Services, Inc. signed by [redacted]. He states that the beneficiary's certificate from the National Taichung Institute of Commerce represents the U.S. equivalent of graduation from "high school plus two years of university-level credit (an associate's degree) in foreign languages from an accredited community college." [redacted] also reviewed the beneficiary's resume, a certificate representing professional training at a private organization in the United States, and a letter from [redacted] of the Seattle Pacific University, which claimed that the beneficiary had obtained two years of university-level credit in foreign languages from an accredited U.S. community college. Further, [redacted] determined that based on the Knight letter and as a combination of education and work experience, the beneficiary would have the U.S. equivalent of a bachelor's degree in business administration with an emphasis in logistics management. It is noted that [redacted]'s credentials are not stated and, other than the letter from [redacted], no resources are given to support his conclusion. The AAO noted this deficiency in its request for evidence. However, the petitioner did not provide any evidence to clarify this issue. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

[redacted] letter is dated January 11, 2000. His conclusion that the beneficiary has the U.S. equivalent of a bachelor's degree in business administration with an emphasis in logistics management is based on a combination of the beneficiary's employment experience using a three-for-one formula of three years of experience equating to one year of undergraduate study. This equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

[redacted] opinion is based on a review of the beneficiary's resume, which is not part of this record of proceeding, and other documents relating to the beneficiary's educational program including his graduation from the National Taichung Institute of Commerce, as well as work materials related to the beneficiary's employment experience. It is not clear which specific documents to which [redacted] refers. It is noted that the he states that he reviewed a listing of employment experience set forth on the beneficiary's resume spanning a period from July 1989 to

[3] It also indicates that the school's name changed to the National Taichung Institute of Technology in August 1999. The record also reflects that the beneficiary was 14 or 15 years of age when he began attending this school.

December 1999. However all of these years are not included with the beneficiary's experience listed on Part B of the ETA 750.[4] Besides his employment with the petitioner, the beneficiary claims only one other employer on the ETA 750. The beneficiary states that he worked for [redacted]. in Taiwan and in Atlanta, Georgia from 1997 to October 2000. It is additionally noted that the employment verification letter provided by [redacted] lists the beneficiary's position only as "staff" from July 1989 to February 1993. No job duties are described that would aid in accurately assessing the weight of this experience or the claims by [redacted] on his evaluation. It may be additionally observed that [redacted] also states that he considers the job of district manager to be a professional position.

Another letter, dated July 12, 2004, is signed by [redacted] of Seattle Pacific University also has been provided. The letter is addressed to [redacted] of the Foundation for International Services, Inc. and offers [redacted] opinion that faculty of the university has the authority to assess and evaluate college credit for training and experience. This letter does not mention the beneficiary's name or discuss any specific individual's credentials.

The director denied the petition on August 18, 2006, determining that the beneficiary did not hold possess a bachelor's degree or its foreign equivalent. The director also denied the petitioner's request to amend the Form I-140 to classify the beneficiary as an other worker under section 203(b)(3)(A)(iii) of the Act, noting that since the Form ETA 750 requires that the beneficiary holds a minimum of a bachelor's degree, then the petition could not be eligible for such a classification.

On appeal, counsel asserts that the petition qualifies for consideration for a visa under the skilled worker category pursuant to section 203(b)(3)(A)(i) of the Act. Counsel also cites *Grace Korean United Methodist Church v. Michael Chertoff,* 437 F. Supp. 2d 1174 (D. Or. 2005) in support of his argument that the USCIS interpretation of a "bachelor's degree or its equivalence" is misplaced and that the beneficiary qualifies as a skilled worker because he possesses at least two years of experience. Counsel also criticizes the AAO's use of the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO) in order to review an alien's educational credentials.[5]

Part A of the ETA 750 indicates that the DOL assigned the occupational code of 184.117-054 and title Manager, Regional, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at

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[4] *See Matter of Leung,* 16 I&N Dec. 2530 (BIA 1976), where the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B lessens the credibility of the evidence and facts asserted.

[5] 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.

http://online.onetcenter.org/crosswalk/[6] 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 4.

Job Zone Four requires "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 id.* Additionally, DOL states the following concerning the training and overall experience required for these occupations:

> A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

Based on the position's job title, job duties, the educational requirements as set forth on the ETA 750, the SVP identified by DOL, 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:

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[6]Accessed 10/21/09 under http://online.onetcenter.org/link/summary/11-3071.01, (Transportation Managers, DOL's updated correlative occupation).

> 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.

For the reasons explained below, the AAO finds that the certified job is for a professional position. Even if considered in the skilled worker category, we do not find that the petition is eligible for approval.

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 750 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).[7] Id. at 423. The

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

> 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.

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 USCIS to determine if the petition and the alien beneficiary are eligible for the classification sought. 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 (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.

The petitioner in this matter relies on the beneficiary's combined education and work experience to reach the "equivalent" of a degree.

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, an associate'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 is asserted to rely on work experience alone or a combination of multiple lesser degrees, the credentials are not an "foreign equivalent degree," but a combination of factors asserted to be the "equivalent" of a bachelor's degree.

Because the beneficiary does not have a four-year United States baccalaureate degree or a foreign equivalent degree, from a college or university as reflected 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 a bachelor's degree based on one program of study from a college or university.

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff, supra,* as cited by counsel, which finds that U.S. 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." 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*, 437 F. Supp. 2d at 1179 (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 USCIS, 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).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The 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 USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at 17, 19. S*ee also Maramjaya v. USCIS,* Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this matter, the Form ETA 750 does not describe or specifically set forth that an equivalency to the requirement of a four-year bachelor's degree could be an associate's degree or a combination of such a degree, or two years of schooling, and experience.

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.

Further, the employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS,* Civ. Act. No. 06-2158, 14 n. 7. Thus, USCIS agrees that the best evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position is evidence of how it expressed those requirements to DOL during the labor certification process and not afterwards to USCIS. It is noted that included in the petitioner's response to the AAO's request for evidence is a copy of the petitioner's notice of job availability and copies of three newspaper advertisements. The internal posting of the job notice advised that the requirements for the job were a bachelor degree or its equivalence, one year of experience in the job offered and fluency in Mandarin Chinese. All three newspaper advertisements also expressed the educational qualification requirement as a bachelor degree or its equivalence. No equivalence was defined in the ads. The petitioner additionally provided a June 7, 2001 letter to the State of New York Department of Labor requesting a reduction in recruitment and a copy of a May 14, 2001 letter to the State Department of New York discussing the language requirement on the Form ETA 750. Neither the correspondence nor the advertisements advised DOL or any otherwise qualified U.S. workers that the educational requirements of the job may be met through something less than a four-year bachelor's degree based on a combination of education and experience. No specific equivalency to a four-year bachelor's degree was defined on the ETA 750, or in the advertisements or in the advertisements to U.S. workers. The petitioner additionally submitted a statement that "no qualified applicants responded to our recruitment." From the petitioner's statement, it is unclear whether

candidates who responded would have been considered for the position if they had less than a four-year bachelor's degree or whether any candidates would have been considered based on any undefined equivalency to a bachelor's. The petitioner did not attach any responsive resumes.

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

The record fails to indicate that the beneficiary's credentials would qualify him for a visa classification as a professional. Additionally, the record fails to establish that the position as defined on the ETA 750 should be considered in a skilled worker category. The Form ETA 750 does not provide that the minimum academic requirements of four years of college culminating in a bachelor's degree or its equivalence for the certified position of district manager might be met through an associate's degree and experience or some other formula as defined on the Form ETA 750. The Form ETA 750 does not define an equivalency that would have advised DOL or U.S. workers in its correspondence or advertisements that an equivalence might be satisfied through a quantitatively lesser degree such as an associate's degree or a combination of such a degree and a specified amount of experience. Moreover, as noted above, the three-for-one formula used to calculate experience to equivalent undergraduate study applies to non-immigrant H-1B petitions, not to immigrant petitions. The evaluation submitted relies on documents not in the record and nothing adequately verifies how the evaluator assessed the beneficiary's work experience in combination with unrelated education of less than the required four years of college to reach the equivalent of a bachelor's degree in business management.[8] Thus, the alien does not qualify in the professional visa category, and even if considered in the skilled worker category, his educational qualifications do not meet the terms of the labor certification as expressed or as extrapolated from the evidence of its intent about those requirements during the labor certification process.

[8] As noted above, 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. at 791. *See also Matter of Ho*, 19 I&N Dec. at 591-92: It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies.

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and fails to meet the requirements of the labor certification, and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act.

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.