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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B6

[redacted]

Date: APR 05 2012 Office: TEXAS SERVICE CENTER File: [redacted]

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:

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 $630. 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,

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas 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 skilled nursing facility. It seeks to employ the beneficiary permanently in the United States as a medical records administrator. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), was obtained.[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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The record shows that the appeal is properly filed, 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 considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[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.

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 February 10, 2003.[3] The Immigrant Petition for Alien Worker (Form I-140) was filed on April 26, 2007.

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[1] The petitioner did not submit its Form ETA 750 with the Form I-140 and instead requested that USCIS obtain a copy of the certified labor certification, which it did.

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). 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] 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 job qualifications for the certified position of health records administrator are found on Form ETA 750 Part A. Item 13 of the duplicate certified Form ETA 750A contains no job duties.[4] 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	8
High school	4
College	4
College Degree Required	Bachelor of Business
Major Field of Study	Health Care Management

Experience:

Job Offered	0
(or)	
Related Occupation	0

Block 15:

Other Special Requirements [blank]

As set forth above, the proffered position requires four years of college culminating in a Bachelor of Business degree in Health Care Management. The labor certification did not provide any alternative to the education or experience requirements found in Block 14.[5]

In support of the beneficiary's educational qualifications, the record contains a copy of the beneficiary's Bachelor of Science in Health Information Management from Curtin University of Technology, Perth, Australia, awarded July 22, 1998 with accompanying transcript and a transcript from Western Mindanao State University. The petitioner also submitted a letter from [redacted] and [redacted] of Curtin

[4] On appeal, the petitioner provided an uncertified copy of the Form ETA 750. Although Item 13 is complete on that copy, the duplicate copy of the labor certification provided to USCIS by the DOL at the request of the petitioner does not include any requirements in Item 13. It is unclear whether this item was blank on the original or whether the omission occurred when DOL forwarded the duplicate copy.

[5] The duplicate Form ETA 750B is blank, including Part B, Items 11 through 15 regarding the beneficiary's education containing no information about the beneficiary's education or experience and not indicating that the beneficiary signed the document. It is unclear whether the labor certification was submitted this way or whether it is as a result of a copy being ordered from DOL.

University, stating that the beneficiary was able to complete the three-year degree program in two years because of her previous nursing school experience. The record also contains a copy of three credentials evaluations from [redacted] of [redacted] and [redacted], and [redacted] concluded that the beneficiary holds the equivalent of a Bachelor of Business Administration in Health Management, and [redacted] conclude that the beneficiary holds the equivalent of a Bachelor of Science in Health Information Management. All of the evaluators rely solely upon the beneficiary's three-year degree from Curtin University, which included advanced standing credits from the beneficiary's nursing background.

The director denied the petition on February 28, 2008. He determined that the labor certification required a four-year, single-source U.S. baccalaureate and that the beneficiary's three-year degree from Curtin University was not equivalent to the degree required by the labor certification. Further, no evidence in the record otherwise indicated that the petitioner intended it would accept anything other than a single-source, four-year degree at the time the labor certification was filed.

The occupational classification of the offered position is not one of the occupations statutorily defined as a profession at section 101(a)(32) of the Act, which states: "The term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

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.

On June 24, 2011, the AAO issued a Request for Evidence (RFE) to the petitioner stating that the labor certification did not specify that a combination of degrees or education and experience would be accepted as the equivalent of a four-year U.S. bachelor's degree and requesting recruitment and other evidence to establish the petitioner's intent for the minimum requirements of the position. In its August 8, 2011 response, the petitioner submitted its in-house advertisement which states that a Bachelor of Business Administration in Health Care Management is required. The petitioner also submitted advertisements placed in the *LA Daily News* on June 30, 2002, July 28, 2002, August 25, 2002, September 29, 2002, October 27, 2002, and January 31, 2003. The advertisements in the *LA Daily News* contained no requirements for the position. The same advertisement was published on *The Los Angeles Daily News* website on January 31, 2003. These advertisements failed to put candidates on notice of the position's full requirements. The petitioner placed a job advertisement on JobLaunch.com in May 2002, which stated that '[redacted] was required. The recruitment report dated February 7, 2003 stated that the petitioner received no

resumes. In response to the AAO's RFE, counsel stated that it posted the job notice for nine months with no response received and otherwise complied with DOL regulations and provided a "good faith effort" to recruit U.S. workers. Because only two of the job advertisements stated that a bachelor's degree was required and none of them indicated that a foreign equivalent degree would be accepted, the recruitment information does not provide a complete picture of what the petitioner would have accepted as the minimum requirements for the position.

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

> 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 left to United States Citizenship and Immigration Services (USCIS) to determine whether the proffered position and alien qualify 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).[6] 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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> * * *
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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

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

> 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).[7]

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).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a 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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[7] The Ninth Circuit, citing *K.R.K. Irvine, Inc.,* 699 F.2d at 1006, has stated:

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

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

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. 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. *Id.* 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. *Id.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at *17, 19. In the instant case, unlike the labor certification in *Snapnames.com, Inc.,,* the petitioner's intent regarding educational equivalence is clearly stated on the ETA 750 and does not include alternatives to a four-year bachelor's degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id. See 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 specify an equivalency to the requirement of a Bachelor of Business 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). 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 that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) 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.) 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. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement 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, we could not consider education earned at an institution other than a college or university.

In the instant case, the petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A).[8] The AAO will first consider whether the petition may be approved in the professional classification.

To demonstrate that the beneficiary has the equivalent of a U.S. bachelor's degree, the petitioner submitted three evaluations of the beneficiary's education in an attempt to show that the beneficiary met the educational requirements of the labor certification. The credential evaluation from [redacted] of [redacted] indicates that the beneficiary's three-year degree from Australia would be equivalent to a United States four-year bachelor's degree. [redacted] explains that the program can be considered "accelerated" as "the classroom hours in one form or another exceeded 1800 hours in the BSc (Health Management) curriculum.'" [redacted] relies on the beneficiary's characterization of her studies as requiring "1903 contact hours which equates to 126 semester credit hours in the United States system." [redacted] discusses Carnegie Units in general, concluding that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate but makes

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[8] Employment based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. The petitioner indicates the requested classification by checking a box on the Form I-140. The Form I-140 version in effect when the petition was filed did not have separate boxes for the professional and skilled worker classifications. In the instant case, the petitioner selected Part 2, Box e of Form I-140 for a professional or skilled worker. The petitioner did not specify elsewhere in the record of proceedings whether the petition should be considered under the skilled worker or professional classification. After reviewing the minimum requirements of the offered position set forth on the labor certification and the standard requirements of the occupational classification assigned to the position by DOL, the AAO will consider the petition under both the professional and skilled worker categories.

[9] [redacted] indicates he has a "canonical diploma of Sacrae Theologiae Professor" from St. David's Ecumenical Institute of Divinity, which he equates to a Doctorate of Divinity.

no attempt to assign credits for individual courses. Ultimately, the record contains no evidence that the Carnegie Unit is a useful way to evaluate the beneficiary's degree. According to the Carnegie Foundation's own website, http://www.carnegiefoundation.org/faqs (accessed November 25, 2011 and incorporated into the record of proceeding), the Carnegie Unit represents 120 high school hours in one subject. Fourteen "units" warrant admission to college. The website concludes: "The 'Carnegie Unit' does not apply to higher education."

The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Australian tertiary education system. For example, if the ratio of classroom and outside study in the Australian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Australian classroom hours would be meaningless. *See* [redacted] The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf. [redacted] relies upon a study done by [redacted] and [redacted] where the authors devised a non-accelerated course of study that yielded a bachelor's degree in three years instead of the customary four years. [redacted] concludes that 120 credits, the amount associated with a United States four-year bachelor degree, "are not invariably wedded to a four-year enrollment." Although the authors of the study were able to design a three-year program that encompassed the same amount of knowledge as a four-year program, nothing in the study suggested that every three-year program would be equivalent to the traditional U.S. four-year bachelor's degree. No evidence appears in the record to show that the Australian three-year degree program in which the beneficiary was enrolled is engaged in a similar intensive study or that it included the same level of knowledge included in a four-year program; nor does any evidence in the record otherwise suggest that the courses taken in pursuit of the Australian three-year degree in this case are equivalent to those courses necessary to obtain a four-year degree. [redacted] cites no peer reviewed study equating an Australian three-year education to a four-year education obtained in the United States.

[redacted] also relies on a UNESCO document. The relevant language relates to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

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

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined

by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.[10]

[redacted] also relies on "US Recognition of International Qualifications: An Australian Perspective" by [redacted] This document advocates for the acceptance of a three-year Australian degree as equivalent to a four-year U.S. baccalaureate, but does not state that such acceptance is widespread. Instead, it notes that there are "no universal rules on the acceptance of 3 yr Bachelor Degrees for admission to graduate program" and argues that the extra year of high school education is equivalent to the general studies required by U.S. institutions. Nothing in the document states that an Australian three-year degree is widely accepted as the equivalent to a U.S. four-year degree.

The credential evaluation from [redacted] of [redacted] concluded that the beneficiary holds the equivalent of a "U.S. Bachelor of Science with a major in Health Information Management, representing 126 credit hours, from a Regionally Accredited Institution of Higher Education in the United States of America." [redacted] assigned credits to the classes taken by the beneficiary, but does not state on what basis she determined the number of credits. [redacted] also cites to the UNESCO conventions referenced above. The sources cited by [redacted] support the argument that some colleges and universities accept the three-year degree, but her sources do not support her ultimate conclusion that a three-year degree is equivalent to a United States baccalaureate.

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[10] On appeal, counsel asserts that UNESCO provides that international degrees should be recognized by the U.S. and that the U.S., as a member state of the UNESCO should be bound by its terms. As stated above, the UNESCO documents do not state or suggest that a three-year degree should be considered the equivalent of a four-year degree for the purpose of classifying an individual for immigration benefits.

Similarly, counsel cites the Lisbon Convention. The Lisbon Convention related to the Recognition of Qualifications concerning Higher Education in the European Region, dated April 11, 1997. The Lisbon Convention discusses recognition of qualifications issued by other parties to meet the general requirements for access to higher education, "unless a substantial difference can be shown between the general requirements for access in the Party in which the qualification was obtained and in the Party in which recognition of the qualification is sought." Nothing in this document mandates that a state accept a degree issued by an educational institution of a foreign state. In addition, this document is not a legally binding instrument, but instead is a recommendation "which Member States are invited to apply."

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

The petitioner submitted a third credential evaluation from [redacted] of [redacted] which concludes that the beneficiary holds the equivalent of a Bachelor of Business Administration with a concentration in Health Management. [redacted] states that the beneficiary's "completed coursework in general studies and in her areas of concentration" taken by the beneficiary in pursuit of her Australian bachelor's degree are "indicative that [the beneficiary] satisfied requirements substantially similar to those required toward the completion of academic studies leading to a Bachelor's Degree from an accredited institution of higher education in the United States." [redacted] does not attempt to assign particular credit for particular classes nor does he explain how three years of study in pursuit of an Australian bachelor's degree would be equivalent to the four years required for a U.S. bachelor's degree.

Moreover, as advised in the RFE issued to the petitioner by this office, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://edge.aacrao.org/info.php. 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.[12] 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.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[13]

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[12] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

[13] In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

EDGE provides that an Australian Bachelor's degree is awarded upon completion of three years of study and represents attainment of a level of education comparable to three years of university study in the United States. It does not suggest that a three-year degree from Australia may be deemed a foreign equivalent degree to a U.S. baccalaureate. 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). The petitioner submitted no evidence in response to the RFE to demonstrate that the information provided by EDGE is inapplicable to the beneficiary's degree or how three years of study in pursuit of the Australian degree would be equivalent to the four years required for a U.S. baccalaureate.

On appeal, counsel states that several U.S. schools have three-year bachelor programs including The University of Texas,[14] University of Notre Dame,[15] Barry University,[16] Drexel University,[17] Regis College,[18] Lander University,[19] Ball State University,[20] Guilford College,[21] Florida State University,[22] Eastern Michigan University,[23] Northern Arizona University,[24] East Carolina

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[14] The University of Texas website does not provide for a three-year bachelor's degree program. *See* http://registrar.utexas.edu/docs/catalogs/gi/ut-catalog-gi-11-12.pdf (accessed September 13, 2011).

[15] The University of Notre Dame offers no three year degree plans. *See* http://admissions.nd.edu/life-at-notre-dame/academics/ (stating that most academic plans are four-year plans, except for Architecture which is a five-year plan) (accessed September 13, 2011).

[16] Barry University does not offer three year degree plans. *See* http://www.barry.edu/ugcatalog/pdf/general2011_12.pdf (accessed September 13, 2011).

[17] Drexel University provides accelerated programs for students who wish to also complete a graduate degree, which amounts to three years of an undergraduate program, but it does not offer three-year bachelor degrees. *See* http://www.drexel.edu/catalog/SCHOOL/curriculum/coas.htm (accessed September 13, 2011).

[18] Regis College does not offer a three-year degree. *See* http://www.regiscollege.edu/UserFiles/File/current_students/Regis_College_Undergraduate_Academic_Catalog_1-13.pdf at page 30 (accessed September 13, 2011).

[19] Lander University does not offer a three-year bachelor's degree and describes itself on its webpage as a four-year institution. http://www.lander.edu/en/About-Us/Overview.aspx (accessed September 13, 2011).

[20] Ball State does not offer three year degrees. *See* http://cms.bsu.edu/Academics/UndergraduateStudy/Catalog/201112Catalog/DegreeReq.aspx (accessed September 13, 2011).

[21] Guilford College does not offer a three-year bachelor's degree. *See* http://www.guilford.edu/academics/catalog/academic-regulations/ (outlining the requirements for each of the four years of study) (accessed September 13, 2011).

[22] Florida State University offers assistance in completing a bachelor's degree in three years for those students who "enter the university with college credits earned through dual enrollment or through credit by exam" and the website specifies that there are no guarantees that the student will

University,[25] Southern Oregon University,[26] Matteo Ricci College of Seattle University,[27] Richard Stockton College of New Jersey,[28] Georgetown College,[29] and Northwest Missouri State University.[30] Most of the schools award a degree after three years of study only for students who earned credits outside of the college (such as with advanced placement credits from courses in high school), who took classes during summer school, and/or who took a greater than usual course load in each semester. The ability of certain students to complete the program in less than four years does not mean that the institutions award three-year bachelor's degrees. Georgetown College and Southern Oregon University offer specific three-year bachelor degree tracks, however, the course of study involves more higher level classes than the usual four-year program and is described on both institutions' websites as being particularly rigorous. The petitioner presented no evidence that the beneficiary's undergraduate degree is comparable to an intensified course of study found in the United States three-year programs. Counsel also cites certain graduate schools that accept three-year degrees for admissions to their graduate programs. The decisions of certain institutions to accept three-year degrees are those made by those particular institutions and often carry caveats or restrictions on the degrees that will be accepted for admissions; their decisions do not bear upon the

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graduate in three years. *See* http://www.degreein3.fsu.edu/ (accessed September 13, 2011).

[23] Eastern Michigan University has a three-year bachelor's degree for students who earn 16 or more credits before enrolling and taking a higher than normal course load. *See* http://www.emich.edu/aac/forms/3YrAccel.pdf (accessed September 13, 2011).

[24] Northern Arizona University offers a three-year track for their bachelor's degree program, which is available to students with credits from other sources and who are willing to take classes outside of the normal fall and spring semester. This program is not separate from the four-year degree offered, but is a way for a student to complete the same amount of coursework in a shorter time frame. *See* http://www4.nau.edu/gateway/Global/3yr/default.asp (accessed September 13, 2011).

[25] East Carolina University has a four-year degree program. *See* http://www.ecu.edu/cs-acad/ugcat/regulations.cfm (accessed September 13, 2011).

[26] Southern Oregon University has an accelerated baccalaureate program that awards baccalaureate degrees after a three-year course of study. http://www.sou.edu/abp/index.shtml (accessed September 13, 2011).

[27] Matteo Ricci College offers a three-year baccalaureate program, but that program is only available to students who matriculated from one of five named high schools that offer college courses through the university to its students while in high school. *See* http://www.seattleu.edu/mrc/bah/Default.aspx?id=8662 (accessed September 13, 2011).

[28] Stockton College of New Jersey is a four-year institution. *See* http://intraweb.stockton.edu/eyos/bulletinpdf/content/docs/oldbulletins/Undergraduate_Bulletin_2008-2010.pdf, page 3 (accessed September 13, 2011).

[29] Georgetown College offers an accelerated degree plan. http://wordpress.georgetowncollege.edu/catalog/majors-minors/2010-2011/liberal-studies// (accessed September 13, 2011).

[30] Northwest Missouri State University does not offer a three-year bachelor's degree. *See* http://www.nwmissouri.edu/academics/catalog/pdf/cat1012_front.pdf, page 42 (accessed September 13, 2011).

term for immigration purposes.

In addition to the specific schools listed, the petitioner cited a publication by [redacted] regarding how he "re-engineered a four year bachelor's degree to a new three-year format" for New Hampshire College. [redacted] work, similar to the programs at Georgetown College and Southern Oregon University, demonstrate the possibility of a U.S. bachelor's degree that requires only three years to complete, however, the petitioner must demonstrate that the program completed by the beneficiary meets the enhanced standards of such three-year programs.[31] The petitioner submitted no such evidence.

The petitioner also cited Federal Trade Commission guidance that states that "It generally takes time to earn a college or advanced degree -- three to four years for an undergraduate degree . . ." *See* http://business.ftc.gov/documents/bus65-avoid-fake-degree-burns-researching-academic-credentials. The FTC guidance is used to aid businesses in ensuring that their employees have the credentials that they have claimed. The FTC does not define the term "bachelor's degree" or otherwise determine what constitutes a bachelor's degree pursuant to law. The term "bachelor degree" is defined for immigration purposes as a U.S. baccalaureate degree or its equivalent.

Counsel cites World Education Services' article "Evaluating the Bologna Degree in the U.S." dated March/April 2004 and concludes that "calendar years of enrolment [sic] are not the determining factor in deciding the equivalence of these degrees." The article includes an assessment of the Bologna Process and terms "the new European bachelor's" degree based on three years as "quite distinct from its U.S. counterpart." The article concludes that

> [t]he main criteria [to] consider when assessing a degree are the level, structure, scope and intent of the program. Those factors are expressed in terms of: requirements for admission to the program; its contents and structure; and the function that the credential is designed to serve in the home system, respectively.

The petitioner submitted no evidence to demonstrate that the above enumerated factors are present in the beneficiary's degree as compared to a four-year U.S. bachelor's degree. The evaluations submitted by the petitioner do not use these criteria and do not provide a basis for the conclusion that the beneficiary's degree is equivalent to a U.S. bachelor's degree. The petitioner cites an

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[31] The three-year bachelor's program designed by [redacted] is the three year Honors program in Business that is offered at Southern New Hampshire University. The website states that the program "is custom-designed to be completed in six semesters" and "[students] will earn the same number of credits – 120 – as students in four-year bachelor's degree programs." http://www.snhu.edu/2220.asp (accessed September 13, 2011). The program emphasizes that it is in the minority of programs being offered and that it emphasizes certain "core competencies" to ensure its graduates have the same level of education as four-year degree recipients. The beneficiary's degree is a degree usually earned in three years and the petitioner presented no evidence to demonstrate that it particularly has the same requirements as a U.S. four-year degree.

Association of International Educators article that also emphasizes the difference between European and U.S. degrees as being a difference between focus on the major field of study as opposed to the U.S. focus on general education in the first two years. Again, the petitioner submitted no evidence to demonstrate that the beneficiary's education in particular has a lesser focus on general courses and a more intensive focus on the major field of study's courses and that it is thus equivalent to a U.S. four-year degree.

The Form ETA 750 does not provide that the minimum academic requirements of 4 years of college and a Bachelor of Business degree in Health Care Management might be met through three years of college or some other formula other than that explicitly stated on the Form ETA 750. On appeal, counsel states that in approving the petitioner's Form I-129 H-1B petition sponsoring the beneficiary, USCIS has already accepted the beneficiary's degree as equivalent to a U.S. bachelor's degree. On the contrary, the regulations governing H-1B petitions differ from those governing the instant petition. As a result, a finding made concerning a Form I-129 petition may not necessarily be the same as one made concerning a Form I-140 petition. Further, the AAO is never bound by a decision of a service center or district director. *See Louisiana Philharmonic Orchestra vs. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 2000), *aff'd.*, 248 F. 3d 1139 (5th Cir. 2001), cert. denied, 122 S.Ct. 51 (2001). The copies of the recruitment materials, provided with the petitioner's response to the request for evidence issued by this office, also fail to advise any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. The beneficiary does not qualify as a professional since she does not have a four-year college degree in Health Management as required by the labor certification.

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.

Even if the petition qualified for skilled worker consideration, the beneficiary does not meet the terms of the labor certification because she does not have four years of college education as required by the terms of the labor certification, and the petition would be denied on that basis as well. See 8 C.F.R. § 204.5(l)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.