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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

[redacted]

b6

DATE: AUG 3 1 2012 Office: NEBRASKA 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to 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 employment-based Immigrant Petition for Alien Worker (Form I-140) was initially approved by the Director, Nebraska Service Center. Upon determining that the petition had been approved in error, the director served the petitioner with a Notice of Intent to Revoke (NOIR) the approval of the petition. Subsequently, the director revoked[1] the approval of the preference petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The director's decision to revoke the petition's approval will be affirmed.

The petitioner is a software development and consulting firm. It seeks to employ the beneficiary permanently in the United States as a programmer analyst[2] As required by statute, Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL), accompanied the petition.[3]

The Form I-140 was filed on April 21, 2006.[4] It was approved on October 2, 2006. Upon further investigation and review, the director issued a NOIR the petition's approval on April 23, 2010, informing the petitioner that; (1) the beneficiary's letters of experience that were submitted in support of the petition were suspect and that an investigation by U.S. Citizenship and Immigration Services (USCIS) had confirmed that at least one of the letters was fraudulent; and (2) the beneficiary's MBA diploma from [redacted] was suspect because the Government of India's University Grants Commission website states that the institution is not accredited.[5] The petitioner was afforded thirty days to respond to the director's concerns raised in the

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[1] In *Tongatapu Woodcraft Hawaii, Ltd. v. INS,* 736 F.2d 1305, 1308 (9th Cir. 1984), the court stated that "[I]t is important to note that a *visa petition* is not the same thing as a *visa.* An approved visa petition is merely a preliminary step in the visa application process. It does not guarantee that a visa will be issued, nor does it grant the alien any right to remain the United States." (Citations omitted) (Original emphasis).

[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.

[3] The regulatory scheme governing the alien labor certification process contains certain safeguards to assure that petitioning employers do not treat alien workers more favorably than U.S. workers. New Department of Labor regulations concerning labor certifications went into effect on March 28, 2005. The new regulations are referred to by DOL by the acronym PERM. See 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The PERM regulation was effective as of March 28, 2005, and applies to labor certification applications for the permanent employment of aliens filed on or after that date. In this case, the Form ETA 750 was filed prior to the enactment of the PERM regulations.

[4] On Part 5 of the Form I-140, the petitioner claimed that it was established on January 16, 1999, has 54 workers, reports a gross annual income exceeding 5 million dollars and a net annual income of over $150,000.

[5] It is also noted that the University Grants Commission includes the [redacted] on its list of "fake universities." *See* http://www.ugc.ac.in/page/Fake-Universities.aspx (accessed August 30, 2012).

NOIR.

Regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Upon receipt of the petitioner's response and a review of the record, the director revoked the petition's approval on September 2, 2010, determining that the beneficiary's educational and experiential credentials failed to meet the requirements of the Form ETA 750.

The petitioner, through counsel, appealed the director's decision to revoke the petition's approval. Counsel states on the notice of appeal that all employment verification letters originally submitted with the petition and in response to the director's NOIR were valid and met the terms of the Form ETA 750.

For the reasons explained below, the AAO concurs with the director's decision to revoke the approval of the petition. The AAO concludes that the petitioner failed to credibly demonstrate that the beneficiary possessed the work experience required by the labor certification[6] and that the petitioner failed to establish that the beneficiary possessed the educational requirements required by the labor certification.

Debarment Prohibits Approval of Immigrant Petition

At the outset, it is noted that the petition is not approvable aside from the reasons cited by the director. It is noted that the AAO issued a notice of derogatory information to the petitioner on September 15, 2011. It informed the petitioner that DOL had informed USCIS that the petitioner had engaged in certain actions that made it subject to mandatory debarment provisions of section 212(n)(2)(c)(i) and (ii) of the Immigration and Nationality Act, as amended. The debarment period was set from

[6]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. 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.

September 30, 2010 to September 29, 2012. Accordingly, no immigrant visa petitions may be approved for this petitioner during the debarment period, regardless of when it was filed.[7]

The petitioner in this case was the subject of an investigation by the DOL in accordance with the H-1B provisions of the Act. *See generally* 20 C.F.R. § 655 related to Temporary Employment of Aliens in the United States; and 8 C.F.R. § 214.2(h) provisions related to H-1B nonimmigrants. If DOL determines that there has been a violation of 20 C.F.R. § 655, then under 20 C.F.R. § 655.855(c), USCIS shall not approve a petition during the debarment period: USCIS "shall not approve petitions filed with respect to that employer under sections 204 or 214(c) of the INA (8 U.S.C. 1154 and 1184(c)) for the period of time provided by the Act and described in Sec. 655.810(f)."[8] Therefore, USCIS may not approve a nonimmigrant or immigrant petition during the debarment period, *regardless of when it was filed.*

In response to the AAO's notice, counsel asserts that the AAO decision to adjudicate the instant appeal somehow is violates the petitioner's due process because the backlog of processing times dictates that the appeal would not be ripe for adjudication until after the expiration of the debarment period. Counsel cites no legal authority for this contention and the AAO does not find it persuasive.

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[7] An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO reviews appeals on a *de novo* basis).

[8] We note that certain statutes that preclude USCIS from approving applications effectively require that USCIS deny the application. For instance, the language of Sections 204(c), (d), and (g) of the Act all similarly provide that "notwithstanding [the relevant applicable subsections] . . . no petition shall be approved if [the following facts are present]." Further, on October 21, 1998, President Clinton signed into law the Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, which incorporated several immigration-related provisions, including the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). ACWIA mandated new requirements for petitioners filing for H-1B beneficiaries. Pursuant to ACWIA, penalties were established for H-1B violations on a three tier system: (1) the first tier would encompass non-willful conduct, or less substantial violations such as failure to meet strike, lockout or layoff attestations; failure to meet notice or recruitment attestations; or misrepresentation of a material fact on a labor condition application, and would result in fines of not more than $1,000 per violation and result in the mandatory debarment of at least one year. *See* ACWIA § 413(a) incorporated at 212(n)(2)(C)(i) of the Act; (2) willful violations, such as willful failure to meet any attestation condition; willful misrepresentation; or actions taken in retaliation against whistleblowers, which would result in a fine of not more than $5,000 per violation, and mandatory debarment of two years. *See* ACWIA § 413(a) incorporated at 212(n)(2)(C)(ii) of the Act; and (3) willful violations that result in layoffs, such as a violation of the attestation, or misrepresentation of a material fact in the course where an employer displaces a U.S. worker, which would result in a fine not to exceed $35,000 per violation, and mandatory debarment of at least three years. *See* ACWIA § 413(a) incorporated at 212(n)(2)(C)(iii) of the Act.

Further, it is noted that there are no due process right implicated in the adjudication of a benefits application. *See Blam-Chuc v. Mukasey,* 547 F.3d 1044, 1050-51 (9th Cir. 2008), *see also Lyng v. Payne,* 476 U.S. 926, 942 (1986)("We have never held that applicants for benefits, as distinct from those already receiving them, have a legitimate claim of entitlement protected by the Due Process Clause of the Fifth or Fourteenth Amendment.")

Section 205 of the Act, 8 U.S.C. § 1155, provides that "[t]he Attorney General [now Secretary, Department of Homeland Security], may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 204." The realization by the director that the petition was approved in error may be good and sufficient cause for revoking the approval. *Matter of Ho,* 19 I&N Dec. 582, 590 (BIA 1988).

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ,* 381 F.3d 143, 145 (3d Cir. 2004). The procedural history in this case is documented by the record and incorporated. Further elaboration of the procedural history will be made only as necessary.[9]

Section 204(a)(1)(F) of the Act, 8 U.S.C. § 1154(a)(1)(F), provides that "[a]ny employer desiring and intending to employ within the United States an alien entitled to classification under section . . . 203(b)(1)(B) . . . of this title may file a petition with the Attorney General [now Secretary of Homeland Security] for such classification." (Emphasis added.)

Section 212(a)(5)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(5)(i) provides that 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.

The petitioner must establish that its job offer to the beneficiary is a realistic one and that the opportunity is a *bona fide* job offer. Because the filing of a Form ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the Form ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The filing

[9]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).

date or priority date of the petition is the initial receipt in the DOL's employment service system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on February 13, 2004, which establishes the priority date.[10]

Beneficiary's Qualifications for the Job Offered

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

The minimum education, training, experience and skills required to perform the duties of the offered position are set forth at Part A of the labor certification and reflects the following requirements:

> Block 13: (Job Duties to be Performed)
>
> Analyze, design, and develop business applications using SAP ABAP/4. Test business applications using SAP ABAP/4. Generate business reports using SAP. Work as a team member under supervision.
>
> Block 14:
>
> Education (number of years)
>
> | | |
> |---|---|
> | Grade school | 8 |
> | High school | 4 |
> | College | 4 |

[10]The *bona fides* of the job offer, including such elements as the beneficiary's qualifications for the position and the petitioner's ability to pay the proffered wage are essential elements in evaluating whether a job offer is realistic. In reviewing a petitioner's ability to pay the proffered wage, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although in some cases, the overall circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967). *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2).

College Degree Required	Bachelors or Equivalent Experience
Major Field of Study	Engg or Math or Science or Equivalent

Experience:

Job Offered	1
(or)	
Related Occupation	1 Programmer Analyst

Block 15:

Other Special Requirements n/a

As set forth above, the proffered position requires 4 years of college culminating in a Bachelor's degree or equivalent experience in engineering, math, science or equivalent and 1 year of experience in the job offered or 1 year as a programmer analyst.

It is significant that none of the above inquiries assigned to the 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).[11] 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).

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

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 the 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).

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."

Part A of the ETA 750 indicates that the DOL assigned the occupational title "software engineer" to the proffered position. The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the applicable occupational classification code is noted on the labor certification form. O*NET is the current occupational classification system used by the DOL. Located online at http://online.onetcenter.org, O*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States.[12]

In the instant case, the DOL has categorized the offered position under the SOC code 15.1132-Software Developers, Applications. The O*NET online database states that this occupation falls within Job Zone Four.[13]

According to the DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. The DOL assigns a standard vocational preparation (SVP) of 7 to < 8 to this Job Zone 4 occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See http://online.onetcenter.org/link/summary/15-1132.00* (accessed August 13, 2012). Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

> A considerable amount 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. Because of the requirements of the proffered position and the DOL's standard occupational requirements, the proffered position may be considered under either the professional or 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

[12] *See* http://www.bls.gov/soc/socguide.htm (accessed August 13, 2012).

[13] According to O*NET, most of the occupations in Job Zone Four require a four-year bachelor's degree. http://online.onetcenter.org/help/online/zones (accessed August 13, 2012).

> 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.

As noted above, it is the 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.

On Part B of the labor certification, signed by the beneficiary, the beneficiary claims that he earned a Master of Business Administration in the field of study of "Information Tech" from the University of Varanasey, India, in June 1993. He also states that he received a Bachelor of Science from GND University, India, in March 1991. The Form ETA 750B, signed by the beneficiary on February 10, 2004, also reflects that the beneficiary has worked for the petitioner as a programmer analyst from January 2004 to the day the beneficiary signed the Form ETA 750B. Before working for the petitioner, the beneficiary claims he worked as a senior technical analyst for [redacted] from February 2002 to December 2003 and also was employed by [redacted] as a system analyst from February 2000 to January 2002. No other jobs are listed.

When determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* 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. *See 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 alien employment certification application form. *See id.* at 834. 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.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma and marks sheets from Guru Nanak Dev University, India. It indicates that the beneficiary was awarded a Bachelor of Science in chemistry, botany and zoology on August 1, 1991. The transcripts also indicate that it was a 3-year course of academic study. The petitioner also submitted a copy of the beneficiary's Master of Business Administration (MBA) diploma from Varanasey Sanskrit Vishwavidyalaya, India indicating that it was awarded in 1993. Finally, the petitioner submitted copies of two certificates of achievement and one certificate of attendance. The certificates of achievement were issued by Harbinger Corporation to the beneficiary and indicate that he successfully completed two software courses on April 12 and April 14, 2000, respectively. The certificate of attendance was issued by the Automotive Industry Action Group and indicates that the beneficiary attended a two-day course on March 7-8, 2000.[14]

The petitioner additionally submitted a credentials evaluation, dated February 10, 1999, from [redacted]. The evaluation describes having reviewed the beneficiary's resume, a resume indicating post-secondary computer training in India, a letter from [redacted] attesting to the beneficiary's expertise and copies of the beneficiary's bachelor's and

[14] These courses appear to be brief vocational and/or professional software training classes attended by the beneficiary and are not claimed by the petitioner or by the credentials evaluation to have any academic assignment of baccalaureate value.

master's diplomas.[15] [redacted] states that the beneficiary's combination of courses completed in his MBA degree and his B.S. degree with his post-secondary computer courses "completed through training institutes," as well as work experience[16] is "the equivalent of an undergraduate degree in Computer Science." He also states that the beneficiary's MBA and B.S. degrees are respectively "equivalent to bachelor and master degrees at a regionally accredited college in the United States." The evaluation does not contain descriptions of the beneficiary's courses or discuss the school's accreditation. Therefore, the evaluation does not credibly establish that the education that the beneficiary completed in India is the equivalent of four years of baccalaureate level education in the United States.

It is noted that the record of proceeding does not contain any of the documents that [redacted] states that he reviewed except copies of the beneficiary's master's and bachelor's degrees and respective marks sheets. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Further, [redacted] fails to specify exactly which post-secondary computer courses "completed through training institutes" that he is referring to in his evaluation and does not assign any specific academic value to them. As noted by the director, and as confirmed by the AAO, the beneficiary's MBA is from an unaccredited (possibly "fake,") institution. (*See* footnote 5 herein). As such, the AAO cannot give any evidentiary weight to the beneficiary's diploma from this entity.[17] This

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[15] The evaluator states that, "the documents examined were photocopies, but I have no reason to doubt their accuracy or authenticity."

[16] The experience appears to include "six years as a programmer SAP systems analyst, SAP trainee consultant, and network specialist for several firms in the United States & India." He does not specify exact employers, exact years of employment, or attach the resume or letter from Majestic Financial that he relied upon.

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

further undermines the reliability of the credentials evaluation, which claims that the beneficiary possesses the U.S. equivalent of a master's and bachelor's degree. It is additionally noted that while the beneficiary claims on Part B of the Form ETA 750 that this MBA was in the field of study of "information tech," the marks sheet mentions only one course in "Management Information System." Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Also, as noted above, the beneficiary's bachelor studies were in chemistry, botany and zoology. His three-year Bachelor of Science degree would not be the foreign equivalent to a four-year U.S. bachelor's degree in engineering, math or science or equivalent. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

The regulations define a third preference category "professional" as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." See 8 C.F.R. § 204.5(l)(2). The regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language 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. A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 at 245. The petitioner did not submit any evidence showing that the beneficiary possessed a four-year U.S. bachelor's degree or the foreign equivalent.

The AAO finds the credentials evaluation to be unpersuasive. It states that the beneficiary has, as a result of combined employment experience and academic degrees, an educational background the

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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 a great deal of information about the educational system in India, and states that a "Bachelor of Arts/Bachelor of Commerce/Bachelor of Science represents attainment of a level of education comparable to two to three years of university study in the United States. Credit may be awarded on a course-by-course basis."

equivalent of an individual with a Bachelor's degree in Computer Science. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. As noted above, 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); *see also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony). Additionally, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate.

Therefore, the petitioner failed to demonstrate that the beneficiary possessed a U.S. bachelor's degree or its foreign equivalent, and failed to demonstrate he is thus qualified for the proffered position as a professional through the petitioner's primary requirement of a four-year bachelor's degree or foreign equivalent in Engineering, Math, Science or equivalent.

It is noted that in response to the director's NOIR and on appeal, counsel does not dispute that the beneficiary does not have an accredited Master's degree, or earned a bachelor's degree or a foreign degree equivalent. Rather, counsel claims that the combination of the beneficiary's education and work experience is equivalent to a U.S. bachelor's degree. As set forth above, as the evaluation relies partially on the Master's degree and unverified experience, any claimed educational equivalency has not been established. It is incumbent upon the petitioner to resolve the inconsistencies by independent objective evidence. Attempts to explain or reconcile the conflicting accounts, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Further, the petitioner has not established that the beneficiary has attended four years of college as required by the labor certification. As noted above, the "college" section of Block 14 of the Form ETA 750 states "4" for the minimum number of years of college required for the position. Although counsel in response to the director's NOIR and on appeal asserts that the minimum education requirements for the position is a four-year bachelor's degree or the equivalent of a bachelor's degree earned through "equivalent experience" based on the DOL's specific vocational level (SVP), this is not what the labor certification actually requires. As stated on the Form ETA 750, there is no defined quantifiable level of "equivalent experience." Further, the labor certification specifically requires that candidates have attended four years of college. The degree requirement is a separate requirement from the one year of required experience. Once again, 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. at 833. 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). Additionally, it is noted that the regulations pertinent to immigrant petitions, in contrast to

non-immigrant petitions,[18] do not permit experiential equivalencies to equate to college or university study.

Because the beneficiary does not have a four-year "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 as a professional under section 203(b)(3)(A)(ii) of the Act.

Relevant to whether the beneficiary qualifies as a skilled worker pursuant section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), as noted above, based on the terms of the certified Form ETA 750, the proffered position requires 4 years of college. In addition, the worker must have earned a bachelor's degree or equivalent experience in engineering, math, science or equivalent field of study. Moreover, the position requires one year of experience in the job offered of programmer analyst or as also stated in the related occupations of programmer analyst.

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.

It is noted that 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 (RCL) (D.C. Cir. Mar. 26, 2008), 14 n. 7. As noted above, counsel asserts in response to the NOIR and on appeal that the minimum education requirements for the position is a four-year bachelor's degree or the equivalent of a bachelor's degree earned through "equivalent experience" based on the DOL's specific vocational level (SVP). He maintains that the DOL's job zone level of four permits a bachelor's degree to equate to 2 years of experience toward the SVP. However, the beneficiary does not have a four-year U.S. bachelor's degree or a foreign equivalent degree and, as set forth below, at least one of his employment verification letters is fraudulent. Moreover, as stated above, the Form ETA 750 does not define "equivalent experience." Further, the petitioner has not provided any recruitment documentation in the nature of job advertisements that otherwise show that the petitioner specifically advised prospective U.S. workers without a 4-year bachelor's degree applying for the position of programmer analyst what methodology would be used to calculate "equivalent experience."

Accordingly, the petitioner has not established that the beneficiary meets the educational

[18]The non-immigrant H-1B regulations set forth an equation of three years of experience for one year of education, but as stated herein, that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*).

requirements of the Form ETA 750 because it has not been established that he has acquired the equivalent of a bachelor's degree through "equivalent experience."

The Beneficiary's Experience

The regulation at 8 C.F.R. § 204.5(l)(3) provides in pertinent part:

> (ii) *Other documentation*—
>
> > (A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

In this case, as stated above the petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date of February 13, 2004.

With the petition, the petitioner provided two employment verification letters purportedly from Kellogg's,[19] signed by [redacted] dated June 2, 2004, and from [redacted], dated June 7, 2005, and signed by [redacted][20] Following an investigation by USCIS, the first [redacted] letter was subsequently found to be fraudulent and the [redacted] letter was deemed suspicious since the [redacted] signature was not consistent with other signed documents.

In the director's NOIR, he indicated that at least one of the letters was fraudulent. In response to the NOIR, the petitioner provided two additional employment verification letters from [redacted] and [redacted]. The [redacted] letter is dated May 7, 2010 and is signed by [redacted]" and the [redacted] letter is dated May 13, 2010 and is signed by [redacted] Office Support."[21]

As noted in the director's decision, the petitioner, through counsel, submitted the second employment letters from [redacted] and [redacted] in response to the NOIR. No attempt was made to resolve or clarify the validity of the letters submitted initially with the petition and corroborate the claim of employment with evidence of payment of compensation as would be kept by an official state or federal entity. It is incumbent on the petitioner to resolve any inconsistencies in the record

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[19] The record indicates that [redacted] was purchased by [redacted]

[20] The first [redacted] letter states that it employed the beneficiary from February 25, 2002 to December 30, 2003. The first [redacted] letter states that it employed the beneficiary from February 2000 to January 2002.

[21] The second [redacted] letter states that it employed the beneficiary from February 28, 2002 to December 2, 2003. The second [redacted] letter states that it employed the beneficiary from February 22, 2000 to December 31, 2001.

by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582 at 591-592.

As stated above, on appeal, counsel asserts that all the letters were valid and signed by duly authorized representatives of the respective companies. As this was found not to be the case, the AAO does not find that the letters are credible and finds that the beneficiary does not meet the education or experience requirements of the labor certification and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act.

As noted earlier, regarding the revocation on notice of an immigrant petition under section 205 of the Act, the Board of Immigration Appeals has stated:

> In *Matter of Estime*, . . . this Board stated that a notice of intention to revoke a visa petition is properly issued for "good and sufficient cause" where the evidence of record at the time the notice is issued, if unexplained and unrebutted, would warrant a denial of the visa petition based upon the petitioner's failure to meet his burden of proof. The decision to revoke will be sustained where the evidence of record at the time the decision is rendered, including any evidence or explanation submitted by the petitioner in rebuttal to the notice of intention to revoke, would warrant such denial.

Matter of Ho, 19 I&N Dec. 582 at 590 (citing *Matter of Estime*, 19 I&N 450 (BIA 1987)). In this case, the evidence contained in the record, which raised significant inconsistencies in the evidence as set forth above at the time the decision was rendered, warranted such denial.

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.