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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: MAY 18 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 preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a manufacturer of computer workstations.[1] It seeks to employ the beneficiary permanently in the United States as a systems support engineer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition, because the beneficiary did not have the minimum level of education required on the labor certification.

On appeal to the AAO, counsel for the petitioner contends that the petition, if it cannot be classified as a professional worker, can be classified and approved as a skilled worker. Counsel states that the beneficiary has a bachelor's degree or foreign degree equivalent and is qualified to perform the duties of the position. According to counsel, a foreign degree equivalent as requested in the labor certification includes a combination of education and experience.

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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

As set forth in the director's July 23, 2008 decision, the single issue in this case is whether or not the beneficiary has a bachelor's degree or foreign equivalent.

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

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[1] The record reflects that as of January 27, 2010 the petitioning company [redacted] was bought by [redacted] and was merged with [redacted] The record further shows that after the merger, [redacted] More information on the merger can be found at: [redacted] (last accessed February 2, 2012).

[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).

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), 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/or 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). The priority date is the date when the Form ETA 750 labor certification is accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).[3] In this case, the record reflects that the priority date is on September 21, 2004.

The position's requirements are found on the Form ETA 750, block 14 and 15, as shown below:

> Block 14 (State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in item 13 above):
>
> Education (Enter number of years):
>
> | | |
> |---|---|
> | Grade school: | [blank] |
> | High school: | [blank] |
> | College: | 4 |
> | College Degree Required: | BS or foreign degree equivalent |
> | Major Field of Study: | CS [Computer Science] or related field |
>
> Experience:
>
> | | |
> |---|---|
> | Job Offered: | 3 years |
> | Related Occupation: | 3 years |
> | Related Occupation (specify): | Software/Systems Engineer |
>
> Block 15 (Other Special Requirements):
>
> Experience must include Sun/Solaris; requires Solaris System Administration Certification; must be able to demonstrate competency in a minimum of two of the following disciplines – Hardware, High Availability, Kernel/OS, Databases, RAS/Disaster Recovery, Storage, and Networks.

In summary, the position in this case specifically requires any interested applicant, including the beneficiary, to have, as a minimum, a bachelor's degree or foreign degree equivalent in computer

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[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.

science or a related field. Additionally, three years of experience in the job offered or in a related occupation is required. Nowhere in the Form ETA 750 does the petitioner state that an alternate combination of education and experience is acceptable.

The beneficiary states on block 11 of Part B of the Form ETA 750 that he received the following degree or certificate from the following school:

Name and Addresses of Schools, Colleges, and Universities Attended (include trade or vocational training facilities)	Field of Study	FROM Month Year	TO Month Year	Degrees or Certificate Received
Instituto Universitario de Nuevas Profesiones Caracas, Venezuela	Electronic Engineering	01/1983	01/1988	BA

As evidence of the beneficiary's qualifications, the petitioner submitted copies of the following evidence:

- A copy of the beneficiary's certificate of completion (graduation) and transcripts from [redacted]
- The beneficiary's resume;[4]
- [redacted]
- [redacted]

The director determined that the beneficiary only completed a three-year school program, and

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[4] The resume states that the beneficiary has an "Associate" degree in Electronics, not Bachelor's.

[5] The AAO notes that the educational evaluation from FIS was originally submitted for purposes of obtaining an H-1B visa approval for the beneficiary. Based on the evaluation of the beneficiary's school transcripts from [redacted] the FIS evaluator concluded that, the beneficiary has the equivalent of approximately three years of university-level credit from an accredited college or university in the United States.

[6] The evaluation from [redacted] states that the beneficiary has attained the equivalent of a Bachelor of Science degree in Electronics Engineering from an accredited institution of higher education in the United States based on the course of studies, the credit units earned, the number of years of coursework, the beneficiary's qualifications, and the final diploma.

therefore, his certificate of completion from [redacted] was not equivalent to a U.S. bachelor's degree. The director also declined to accept and classify the position as and the petition for a skilled worker. The director determined that the Form ETA 750 controlled the preference classification of the petition.

In this case, according to the director, the position specifically required the applicants, including the beneficiary, to have a bachelor's degree and a minimum of three years of work experience in the job offered. Accordingly, the director concluded that the petition was filed for a professional worker.

The AAO agrees with the director. As stated by the director the beneficiary in the instant proceeding was required by the terms of the labor certification to have a United States baccalaureate degree or a foreign equivalent degree.

To determine whether a beneficiary is eligible for a preference immigrant visa, USCIS must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[7] According to its website (About AACRAO), http://www.aacrao.org/About-AACRAO.aspx (last accessed April 24, 2012), 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." Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services."

According to the Information Page of AACRAO EDGE, http://edge.aacrao.org/info.php (last accessed April 24, 2012), EDGE is "a web-based resource for the evaluation of foreign educational credentials." Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's

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

National Council on the Evaluation of Foreign Educational Credentials. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download from http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx (last accessed August 15, 2011). If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

EDGE provides a great deal of information about the educational system in Venezuela, and, according to EDGE, the certificate of completion issued to the beneficiary from Instituto Universitario de Nuevas Profesiones, Venezuela (Bachiller Tecnico) represents attainment of a level of education comparable to completion of a vocational or other specialized high school curriculum in the United States.

Additionally, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). We choose not to use the discretion in this case, as the opinions conferred by the academic evaluation companies differ from each other and are inconsistent with the educational credential given by EDGE.

For these reasons, the AAO concludes that the beneficiary does not have the minimum level of education required for the equivalent of a bachelor's degree and does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act.

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.

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that USCIS "does not have the

authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church*, 437 F. Supp. 2d at 1179 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a).

In addition, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19.

In the instant case, unlike the labor certification in *Snapnames.com, Inc.,* the petitioner's intent regarding educational equivalence is clearly stated on the Form ETA 750, and it does not include alternatives to a four-year bachelor's degree or a definition of "foreign degree equivalent." 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 define or clarify the word "foreign degree equivalent." The AAO issued a Request for Evidence (RFE) on July 5, 2011 advising the petitioner to submit, among other things, a signed recruitment report, the prevailing wage determination, all online and print recruitment conducted for the position, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts, if any. The AAO also requested

any other communications with the DOL that may be probative of the petitioner's intent, such as correspondence or documents generated in response to an audit.

In response to the AAO's RFE, counsel for the petitioner submitted copies of the following evidence:

- A copy of the recruitment report addressed to the DOL;
- A copy of the Recruitment Report Instructions issued by the DOL on May 17, 2007 to the petitioner;
- A copy of the prevailing wage determination for the position;
- Copies of the online and newspaper advertisement; and
- A copy of the in-house job posting for the position.

The AAO notes that all of the advertisements, including the in-house job posting, state the minimum requirements for the position to be a BS (Bachelor of Science) degree or foreign degree equivalent in Computer Science (CS) or related field plus three years of work experience as a Software/Systems Engineer. These requirements are consistent with those on the block 14 and 15 of the Form ETA 750, part A.

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In summary, the petitioner in this proceeding cannot use the beneficiary's past experience to demonstrate that he qualifies for the position. As noted earlier, nowhere in the record does the petitioner specify that the words "foreign degree equivalent" include a combination of education and experience. We cannot and should not look beyond the plain language of the labor certification that the DOL has formally issued to interpret the petitioner's intent. Based on the evidence submitted, it is clear that the petitioner intended to recruit U.S. workers who had a four-year bachelor's degree plus three years of work experience in the job offered or in a related occupation as a software/systems engineer.

Further, the petitioner would also have failed to establish the beneficiary's bachelor's degree or equivalent with a combination of his education and experience because the rule to equate three years of experience for one year of education is not applicable to the instant I-140 immigrant petition as it only applies to non-immigrant H1B petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

For these reasons, the AAO finds that the position offered in this case is for a professional worker classification. The petitioner has failed to demonstrate that the beneficiary has a four-year baccalaureate degree or a foreign degree equivalent to a U.S. bachelor's degree as set forth on the labor certification; therefore, he does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act.

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

ORDER: The appeal is dismissed.