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

U.S. Citizenship and Immigration Services

[redacted]

b6

DATE: MAY 3 1 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 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 with the field office or service center that originally decided your case by filing a 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 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 provides IT consulting services. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, a Form ETA 750,[1] Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification in that she does not possess four years of college culminating in a Bachelor's or equivalent degree in Computer Science or Engineering.

On appeal, the petitioner, through counsel, submits additional evidence and contends that the beneficiary's educational credentials satisfied the terms of the labor certification and that the petition should be approved.

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).[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. The petitioner must also establish that it has had the continuing ability to pay the proffered wage.[3] *See Matter of Wing's Tea House*, 16 I&N 158

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

[2] The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

[3] The regulation at 8 C.F.R. § 204.5(g) (2) states, in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the

(Act. Reg. Comm. 1977); 8 C.F.R. § 204.5(d). Here, the Form ETA 750 was accepted for processing on June 2, 2004.[4] The Form ETA 750 states that the proffered wage is $46,051 per year. The Immigrant Petition for Alien Worker (Form I-140) was filed on September 19, 2006. There is no indication on Part B of the Form ETA 750, signed by the beneficiary on May 20, 2004, that she has worked for the petitioning business.

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

> Design, develop, test and implement custom software applications in Windows and UNIX OS. Support Oracle database with RAID system under Unix and installation and migration of Oracle database. Assist in developing procedure for backup/recovery and running utilities. Full support for a mission critical database running. Allocate system storage and plan future storage requirement. Create physical and logical structure. Enroll users and maintain system security.

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	4 [yrs]
High school	8 [yrs]
College	4 [yrs]
College Degree Required	Bachelors or equivalent
Major Field of Study	Computer Science, Engineering

Experience:

Job Offered	6 [mos.]
(or)	
Related Occupation	0

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form of copies of annual reports, federal tax returns, or audited financial statements.

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

Block 15: Other Special Requirements: none specified

As set forth above, the proffered position requires four years of college culminating in a Bachelor's degree or equivalent in Computer Science or Engineering and six months of experience in the job offered of programmer analyst.

On the Form ETA 750B, signed by the beneficiary, the beneficiary listed her prior education as:

1) Maulan Azad College of Science & Commerce, India; Field of study as English, Science, Psychology; Attended from June 1991 to April 1991; Degree or Certificate received claimed as Master of Science.
2) Marathwada University, India; Field of study as Biology; Attended from June 1991 to April 1993; Degree or Certificate received claimed as Master of Science.
3) Aquarius Institute of Computer Science; Field of study as computer studies; Attended from June 1997 to August 1997; Degree or Certificate received claimed as Diploma in Computer Infotech.; Attendance from August 1997 to January 1998; Degree or Certificate received claimed as Diploma in Oracle Rdbms & Developer 2000; Attendance from January 1998 to March 1998; Degree or Certificate received claimed as Diploma in Unix & C.

The Form ETA 750B did not list any additional education or any additional qualifications in box 12 or on any attachment.

The Form ETA 750B also reflects the beneficiary's experience as follows:

1. Employed as a catering manager for [redacted] Illinois from August 2000 to the present.
2. Employed as programmer for [redacted] Chicago, Illinois from April 1998 to July 1999.

In support of the beneficiary's educational credentials, the petitioner submitted the following:

1. A 1993 Master of Science degree in zoology from Marathwada University, India.
2. A 1992 three-year Bachelor of Science degree in zoology and microbiology from Marathwada University, India.
3. Documents from The Aquarius Institute of Computer Science in Chicago, Illinois certifying that the beneficiary completed a course in Unix & C on March 18, 1998; completed a course in Oracle (RDBMS & Dev/2000) on January 12, 1998; and completed a course in Computer Infotech on August 23, 1997.

It is noted that the petitioner's documentation in response to the AAO's request for evidence indicates that the Aquarius Institute of Computer Science is a private business and vocational school. As such, and as noted in the AAO's request for evidence, it will not be considered as accredited by a

U.S. post-secondary school association of regional or national scope recognized by the U.S. Department of Education to accredit institutions offering baccalaureate level classes.[5]

4. On appeal, for the first time, the petitioner submitted a copy of a diploma in computer science from the Marathwada Board of Technical Education Examination indicating that the beneficiary received it as a result of a two-year course from 1993 to 1995. A copy of a statement of marks accompanies this diploma.

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

The Form ETA 750 does not clearly state that the minimum academic requirements of a four-year Bachelor's or equivalent degree in computer science or engineering might be met through a combination of lesser degrees, diplomas or academic studies. The labor certification application, as certified, does not demonstrate that the petitioner would accept a combination of degrees or diplomas that are individually all less than a four-year U.S. bachelor's degree or its foreign equivalent when it oversaw the petitioner's labor market test.[6]

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[5] The petitioner submitted two evaluations to assess the beneficiary's credentials. Neither evaluation considers the Aquarius training or assigns it any academic value.

[6] The U.S. Department of Labor (DOL) has provided the following field guidance: when the Form ETA 750 indicates, for example, that a "bachelor's degree in computer science" is required, and the beneficiary has a four-year bachelor's degree in computer science from the University of Florence, "there is no requirement that the employer include 'or equivalent' after the degree requirement" on the Form ETA 750 or in its advertisement and recruitment efforts. *See* Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). Further, where the Form ETA 750 indicates that a "U.S. bachelor's degree or the equivalent" may qualify an applicant for a position, where no specific terms are set out on the Form ETA 750 or in the employer's recruitment efforts to define the term "equivalent", "we understand [equivalent] to mean the employer is willing to accept an equivalent foreign degree." *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). Where the Form ETA 750 indicates, for example, that work experience or a certain combination of lesser diplomas or degrees may be substituted for a bachelor's degree, "the employer must specifically state on the ETA 750, Part A as well as throughout all phase of recruitment exactly what will be considered equivalent or

As shown on the labor certification, DOL assigned the occupational code of 15-1021, computer programmer to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at *http://online.onetcenter.org/link/summary/15-1021.00*[7] and the description of the position and requirements for the job, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See http://online.onetcenter.org/link/summary/15-1021.00.*[8] Additionally, DOL states the following concerning the training and overall experience required for these occupations:

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

See id.

More specific to this position, O*NET provides that 78 percent of respondents have a bachelor's degree or higher.[9] Further, DOL's Occupation Outlook Handbook, available online at http://www.bls.gov/oco/ocos303.htm, relevant to computer programming jobs provides:

> Education and Training. For software engineering positions, most employers prefer applicants who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. The usual college major for software engineers are computer science, software engineering, or

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alternative [to the degree] in order to qualify for the job." *See* Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). State Employment Security Agencies (SESAs) should "request the employer provide the specifics of what is meant when the word 'equivalent' is used." *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). Finally, DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [United States Citizenship and Immigration Services (USCIS)] to accept the employer's definition." *Id.* To our knowledge, the field guidance memoranda referred to here have not been rescinded.

[7] (Accessed April 23, 2012).

[8] (Accessed April 23, 2012).

[9] *See http://online.onetcenter.org/link/summary/15-1021.00.*

> mathematics. Systems software engineers often study computer science. Or computer information systems. Graduate degrees are preferred for some of the more complex jobs.
>
> Many programmers require a bachelor's degree, but a 2-year degree or certificate may be adequate for some positions. Some computer programmers hold a college degree in computer science, mathematics, or information systems, whereas others have taken special courses in computer programming to supplement their degree in a field such as accounting, finance, or another area of business.

As stated on the labor certification, the proffered position requires a four-year bachelor's degree or equivalent degree in computer science or engineering. The position also requires an applicant to have six months in the job offered as a programmer analyst. Because of the certified position's academic requirements set forth on the labor certification, the SVP as noted above and the majority of programmers who hold a bachelor's degree, the proffered position must be classified as a professional. Even if analyzed in the skilled worker category, the terms of the labor certification must still be met.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

> If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulations use 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, the ETA 750 in this matter is certified by DOL. Section 212(a)(5)(A)(i) of the Act provides:

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

> (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
>
> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

According to 20 C.F.R. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

> Under § 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:
>
> (1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and
>
> (2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified 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). Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> * * *
>
> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for

> the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth circuit stated:

> [I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.,* 699 F.2d at 1006, revisited this issue, stating:

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

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

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

It is noted that a copy of a credential evaluation report, dated February 17, 2000, from the [redacted] is contained in the record. Following a review of the beneficiary's credentials, the evaluation initially states that the U.S. equivalency of her credentials is a high school diploma and a bachelor's degree in zoology from a regionally accredited institution. It also states that the beneficiary's Indian Bachelor of Science degree is the equivalent of three years of undergraduate study in science and that her Master of Science degree in zoology is the U.S. equivalent of a bachelor's and master's degree with no field of study specified.

An additional academic equivalency evaluation, dated January 8, 2006, was submitted, completed by [redacted]. He also concludes that the beneficiary's Indian Bachelor of Science degree represents the U.S. equivalent of three years of academic study toward a Bachelor of Science degree in zoology from an accredited U.S. college or university. [redacted] also concludes that the beneficiary's Master of Science degree in zoology at Marathwada University following her Bachelor of Science degree represents the U.S. equivalent of a Master of Science degree in zoology. [redacted] further determines that the beneficiary completed a post-secondary program in computer science under the auspices of [redacted] India from 1993 through 1995 and received a post-secondary diploma in computer science from the Marathwada Board of Technical Education.

Combining the beneficiary's post-secondary studies resulting in a post-secondary diploma in computer science from the Marathwada Board of Technical Education with her Bachelor of Science and Master of Science degrees from Marathwada University, [redacted] concludes that the beneficiary has attained the U.S. equivalent of a Bachelor of Science, with a dual major in computer science and zoology, as well as a Master of Science in Zoology.

It is noted that Part B of the ETA 750, signed by the beneficiary on May 20, 2006, as well as the WES evaluation, omit any mention of a post-secondary diploma in computer science received from the Marathwada Board of Technical Education. Evidence of the actual diploma was submitted on appeal without any explanation. *See Matter of Leung,* 16 I&N 12 (BIA) (Decided on other grounds, but court deemed applicant's testimony concerning employment omitted from the labor certification to be not credible.) 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. *See Matter of Ho,* 19 I&N Dec. 582, 591 (BIA 1988).

Further, the WES evaluation contains no evidence of authorship, the author's credentials, or the sources of its conclusion. It is also internally inconsistent in initially determining that the beneficiary possesses a U.S. bachelor's equivalency in zoology and subsequently stating that the beneficiary's master's degree represents a U.S. equivalency of a bachelor's and master's degree. 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. at 591-592.

In determining whether the beneficiary's obtained a foreign equivalent degree, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). 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."

EDGE provides a great deal of information about the educational system in India and while it confirms that a bachelor of a science degree represents the attainment of a level of education comparable to two or three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate.

In the advice to admissions officers section relevant to a Master of Science, EDGE states that a Master of Science degree represents the attainment of a level of education comparable to a bachelor's degree in the United States. It further indicates that the completion of a two or three-year bachelor's degree is the prerequisite to admission to a Master of Science program of study.[10]

EDGE also discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not

[10] In *Confluence Intern., Inc. v. Holder,* 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision. In *Tisco Group v. Napolitano,* 2010 WL 3464314, No. 09-10072 (E.D. Mich. Aug. 30, 2010), the court determined that the petitioner had not explained how five years of study in India was the equivalent to the six years of study typically required for a U.S. Master's degree and that the AAO's reliance upon EDGE was appropriate.

suggest that, if combined with a two or three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate.

EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

> Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

EDGE additionally provides in the credential advice for Post Secondary Diplomas that a Post Secondary Diploma following the HSC (higher secondary certificate) represents the attainment of a level of education comparable to one year of university study in the United States. Credit may be awarded on a course-by-course basis.

It is noted that the Trustforte evaluation indicated that the diploma from the Marathwada Board of Technical Education was a post-secondary diploma, not a post-graduate diploma.

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).

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 may be 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.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as she does not have the minimum level of education required for the foreign equivalent of a bachelor's degree. Her three-year Indian Bachelor of Science degree would not meet the requirement of a four-year single source U.S. foreign equivalent degree and is not in a field of study stated and her Master's degree was completed in Zoology, a field irrelevant to the position offered and not the required field of Computer Science or Engineering.

We are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff,* 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that U.S. Citizenship and Immigration Services (USCIS) "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church*, 437 F. Supp. 2d at 1179 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a).

Additionally, we also note the subsequent 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 does not include any clearly defined and stated alternatives to a four-year bachelor's degree in computer science or

engineering based on a combination of education and/or education and experience. 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 clearly state an equivalency to the requirement of a bachelor's degree in computer science or engineering, and merely references "bachelor's or equivalent," which *Maramjaya* found to require a single-source four-year degree.

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

Further, the employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS,* Civ. Act. No. 06-2158, 14 n. 7. Thus, USCIS agrees that the best evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position is evidence of how it expressed those requirements to DOL and the requirements certified by DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence is needed to ensure inflation of those requirements is not occurring in an effort to fit the beneficiary's credentials into requirements that do not seem on their face to include what the beneficiary has.

In support of its recruitment efforts, the petitioner submitted a copy of the prevailing wage request provided to the state department of employment. It is similar to the job offered in this case except the addition of Math or Science have been added to the acceptable fields of study. Similarly, copies of two newspaper advertisements also state that academic requirements for a programmer analyst vacancy at the petitioner's business are a "Bach or its equiv in Comp Sci, Engg, Math or Sci & 6 mos exp in job offd." Finally, a copy of a Job bank description of a programmer analyst opening also fails to accurately state the fields of study and adds "Math or Sci" to the acceptable alternate majors. These advertisements are misleading as to the position's true requirements related to the fields of study and are not consistent with the description of the certified job contained on the approved labor

certification, raising a question as to whether they even relate to this vacancy. 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'r 1986). *See also, Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Only a copy of an internal job posting submitted by the petitioner accurately depicted the academic requirements of the offered job.

The copies of the notice of posting, internet and newspaper advertisements fail to consistently state the certified Form ETA 750 requirements. *See* 20 C.F.R. 656.21 (2004), that the "employer shall document that its requirements for the job opportunity, as described, represent the employer's actual minimum requirements for the job opportunity." By stating terms not included on Form ETA 750, the petitioner has failed to advertise with the true minimum requirements. The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree in engineering or computer science and fails to meet the requirements of the labor certification, and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act. The beneficiary here does not have a single-source four-year degree in the required field of study to qualify as a professional under the terms of the labor certification. Her Master's degree is in an unrelated field. The beneficiary also does not qualify as a skilled worker[11] as she does not meet the terms of the labor certification as explicitly expressed or as extrapolated from the evidence of its intent about those requirements during the labor certification process.

As set forth below and in the foregoing based on the conflicting evaluations, failure to state the Board completed computer education on Form ETA 750 and anomalies in the statements and documents, we do not accept that the beneficiary's combined education is the equivalent of a

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

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

The above regulation requires that the alien meet the requirements of the labor certification. Here the certified requirements allow only for a four-year bachelor's degree in computer science or engineering with no alternate fields of study or a specifically defined equivalent to specify a combination of diplomas and/or degrees. Additionally, the petitioner also has not established that the beneficiary has the equivalent of a bachelor's degree in either Engineering or Computer Science as set forth on the ETA 750.

bachelor's degree with a dual major in Computer Science and Zoology. The AAO specifically raised issues related to the conflicts in claimed and submitted education, and failure to state other relevant education on Form ETA 750. 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, 591-592 (BIA 1988). As set forth below, discrepancies still exist, and, therefore, we cannot conclude that the beneficiary has the required education to meet the terms of the certified labor certification.

Additionally, the AAO finds that some of the beneficiary's diplomas may not be considered reliable evidence of her academic credentials and may not be accepted as probative evidence of her formal education. As noted above, the AAO issued a request for evidence addressing some of the discrepancies noted in the record such as the claimed diploma representing a Master of Science in English, Science, Psychology from Maulan Azad College of Science & Commerce, India as claimed on Part B of the ETA 750. This diploma was purportedly received following attendance from June 1991 to April 1991, which did not make sense in consideration of other claimed education and had not been supported by a copy of the diploma in the record of proceedings. There is a copy of a 1987 marks transcript from the "Govt. College of Arts and Science," in Aurangabad, however it does contain the name of the Maulan College and misspells the word "Examination" as "Examication."

With regard to this diploma, the petitioner, through counsel, failed to provide a Master of Science diploma in English, Science, Psychology from Maulan Azad College of Science & Commerce, India. Instead, the petitioner submitted a letter, dated April 1, 2009, from the controller of examinations. The signature is illegible. He states that the beneficiary, "a student of Maulana Azad College of Arts, Science & Commerce, passed B.Sc. examination held in April 1991 of this University under Seat No. 11634. Accordingly she was issued Degree Certificate in the year of 1991." He then indicates that the beneficiary has been issued a duplicate degree certificate but the format is different from the original because the university has been renamed as "Dr. Babasaheb Ambedkar Marathwada University, Aurangabad with effect from 14.01.1994." Copies of the beneficiary's Bachelor of Science diploma in Chemistry, Zoology and Microbiology indicating that it was conferred on January 18, 1992 were also provided. As stated, they are not duplicates of each other. These documents were submitted in response to the AAO's request for evidence and were accompanied by three marks transcripts representing a course of study from 1989 to 1991.

In response to the request for evidence, the petitioner also submitted a document stamped as a duplicate representing a Master of Science degree in zoology awarded to the beneficiary on January 30, 1993 and stamped as a duplicate dated, March 12, 2009. It was accompanied by copies of two marks transcripts.

The AAO notes that although designated as a duplicate, the diploma provided in response to the AAO's request for evidence is not a duplicate of the diploma provided to the underlying record of

proceedings. Rather than showing the abbreviated name of Marathwada University with no address, the diploma submitted in response to the request for evidence shows [redacted] Marathwada University" with the address given. The signature is designated as the vice-chancellor not the chancellor as appearing on the diploma provided to the underlying record. In the vice-chancellor-signed document, the beneficiary is found to have placed in the First Division in April 1993, but in the diploma provided to the underlying record, the First Division was stated as March/April 1993.

The petitioner has provided no explanation why the Master's diplomas are not truly duplicative of each other. Even if these different notations may be overlooked or explained, the difference in the date that the degree was awarded is stated as two different dates on each of the documents. On the diploma provided to the underlying record as signed by the chancellor, the language appears as . . ."[t]he Degree of Master of Science has been conferred on her at Aurangabad, on the thirtieth day of the month of November in the year one thousand nine hundred and ninety three." On the diploma submitted in response to the request for evidence and signed by the vice-chancellor, the language appears as . . ."[T]he Degree of Master of Science has been conferred on her at Aurangabad, on the thirtieth day of the month of January in the year One thousand nine hundred and ninety-three." Further, the receipt of a Master's degree on January 30, 1993 as designated on this diploma would be highly improbable given the fact that the beneficiary was supposed to have first been qualified and placed in the First Division in April 1993, or not until four months later than the receipt of the degree, according to this document. In the diploma provided to the underlying record, the dates are sequential with the beneficiary being placed in the First Division in "March/April 1993" and the degree not conferred until November 30, 1993. No explanation has been offered that would explain these anomalies. 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, 591-592 (BIA 1988)

Additionally, the petitioner submitted a document stamped as a duplicate that appears to be a diploma in computer science awarded to the beneficiary in May 1995 from the Marathwada Board of Technical Education Examination. The diploma indicates that the diploma represents a two-year course of study. Copies of two marks transcripts identified as duplicates also accompany this document. It is noted that the Diploma in Computer Science is designated as a duplicate but it is different from the copy submitted on appeal in that it contains a different serial number and notes that the beneficiary placed in First class on May in the year "1995 (Two Year) . . .," while the diploma contained in the underlying record states that she placed in First class on May in the year "19993 To 1995 . . ." [sic].

Based on the foregoing discrepancies, as the record currently stands, the AAO does not find the beneficiary's claimed Master's degree in Zoology or her Board issued Diploma in Computer Science to be reliably established by the documentation submitted to the record. 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, 591-592 (BIA 1988). Therefore, the petitioner has not validly established that the beneficiary has the education required for the position offered.

Relevant to the petitioner's continuing ability to pay the proffered wage of $46,051 per year, it is noted that the AAO's request for evidence issued on February 23, 2009, requested that the petitioner provide evidence required by the regulation at 8 C.F.R. § 204.5(g)(2) that covered the period from January 1, 2006 and continues through the present date, including any W-2s issued to the beneficiary if it employed her.[12] The regulation at 8 C.F.R. § 204.5(g)(2) requires that such evidence must include copies of federal tax returns, audited financial statements, or annual reports. In a response dated April 23, 2009, the petitioner provided a copy of its 2006 and 2007 federal U.S. Income Tax Return for an S Corporation and a copy of an IRS application for extension of time to file a return for 2008.

Based on the federal income tax returns for 2004, 2005, 2006 and 2007, the petitioner's net income and net current assets[13] may be expressed as follows:

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[12]Where an S Corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. Where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 17e (2004, 2005) and on line 18 (2006, 2007) of Schedule K. *See* Instructions for Form 1120S, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed March 22, 2007)(indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). In this case, the petitioner's net income is found on line 17e for the years 2004 and 2005 and on line 18 for the year 2006 and 2007.

[13] Besides net income and as an alternative method of reviewing a petitioner's ability to pay a proposed wage, USCIS will examine a petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities. It represents a measure of liquidity during a given period and a possible resource out of which the proffered wage may be paid for that period. A corporate petitioner's year-end current assets and current liabilities are shown on Schedule L of its federal tax return. Here, current assets are shown on line(s) 1 through 6 and current liabilities are shown on line(s) 16 through 18. The difference between current assets and current liabilities may be expressed as net current assets. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the corporate petitioner is expected to be able to pay the proffered wage out of those net current assets.

	Net Income	Net Current Assets
2004	$ 100,605	$ 61,334
2005	$ 81,570	$102,011
2006	$ 111,589	$112,702
2007	$ 224,968	$164,799

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner may have employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. To the extent that the petitioner may have paid the beneficiary less than the proffered wage, those amounts will be considered. If the difference between the amount of wages paid and the proffered wage can be covered by the petitioner's net income or net current assets for a given year, then the petitioner's ability to pay the full proffered wage for that period will also be demonstrated. There is no evidence in this record that the petitioner has employed the beneficiary.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009); *Taco Especial v. Napolitano*, 696 F. Supp. 2d. 873, (E.D. Mich. 2010). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income. *See Taco Especial v. Napolitano*, 696 F. Supp. 2d. at 881 (gross profits overstate an employer's ability to pay because it ignores other necessary expenses).

With respect to depreciation as claimed by counsel, the court in *River Street Donuts* noted:

> The AAO recognized that a depreciation deduction is a systematic allocation of

> the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.
>
> We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

River Street Donuts at 116. "[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support." *Chi-Feng Chang* at 537 (emphasis added).

Matter of Sonegawa, 12 I&N Dec. 612 (Reg. Comm. 1967) is sometimes applicable where other factors such as the expectations of increasing business and profits overcome evidence of small profits. That case, however relates to petitions filed during uncharacteristically unprofitable or difficult years within a framework of profitable or successful years. During the year in which the petition was filed, the *Sonegawa* petitioner changed business locations, and paid rent on both the old and new locations for five months. There were large moving costs and a period of time when business could not be conducted. The Regional Commissioner determined that the prospects for a resumption of successful operations were well established. He noted that the petitioner was a well-known fashion designer who had been featured in *Time* and *Look.* Her clients included movie actresses, society matrons and Miss Universe. The petitioner had lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere.

In this case, although the petitioner's net income and net current assets on its respective federal income tax returns for 2004, 2005, 2006, and 2007 would otherwise be sufficient to pay the instant beneficiary's proffered wage, it is noted that USCIS electronic records indicate that between 2003 and 2008, the petitioner has sponsored at least 245 additional non-immigrant and immigrant workers. The petitioner states on Form I-140 that it employs only fifty workers. **Where multiple beneficiaries are sponsored, a petitioner must show that it has had sufficient continuing income to pay all the wages as of each respective priority date** of the beneficiaries. Without additional documentation

relating to these beneficiaries[14] (for example, payment of proffered wages as shown by W-2s and/or Form 1099s, etc.) the ability to pay the proffered wage in the instant case may not be concluded to have been established either based on net income or net current assets, or relevant to the principles set forth in *Sonegawa,* or that the petitioner has demonstrated that such unusual and unique business circumstances exist in this case, which are analogous to the facts set forth in that case. Further, the petitioner did not submit any evidence of reputation similar to *Sonegawa.* Based on the foregoing, as the record currently stands, it may not be concluded that the petitioner has established its continuing ability to pay the proffered wage.

Finally, as mentioned above, the certified position of programmer analyst requires six months experience in the job offered.[15] The priority date, as established by the labor certification is June 2, 2004. On the ETA 750, Part B, signed by the beneficiary on May 20, 2004, the beneficiary claimed two previous jobs. She stated that she worked as a catering manager for "Parkwan Restaurant" in Chicago from August 2000 to the present. The only other job that she lists is for Aquarius Institute in Chicago where the beneficiary claims to have worked as a programmer from April 1998 until July 1999. In support of the required work experience as a programmer analyst, the petitioner submiited a letter, dated July 8, 1999, from Aquarius Institute of Computer Science, which was signed by [redacted] manager. She confirms that the beneficiary worked with this entity "on Oracle as an Programmer from April 98 to present." This letter, however, failed to describe any of the beneficiary's duties such that it could be considered qualifying experience in the job offered as required by the labor certification.[16]

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[14] Pertinent non-immigrant regulations require the petitioner to pay the prevailing wage for all sponsored foreign workers.

[15] The regulation at 8 C.F.R. § 204.5(l)(3) provides:

> (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.
> >
> > (B) *Skilled workers.* 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.

[16] Other letters, dated August 8, 1995, and February 21, 2009, respectively, from the Sir Sayyed College of Arts, Commerce & Science also mentions that the beneficiary "is associated with the

The letter also failed to confirm if the job was full-time or part-time. As such, the petitioner failed to demonstrate that the beneficiary possessed the required six months of work experience as a programmer analyst.

Based on the foregoing, the AAO cannot conclude that the record supports that the beneficiary possesses the requisite educational credentials or requisite work experience as of the priority date, as required on the Form ETA 750. Additionally, the petitioner has not established its continuing ability to pay the proffered wage as of the priority date set forth on the Form ETA 750.

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*, 299 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)(the AAO's *de novo* authority is well recognized by federal courts).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

Department of Zoology of this college since July 1993," and "assisted" as a demonstrator but these letters did not attempt to claim that the beneficiary was employed as a programmer analyst and appeared to have been submitted for another purpose.