



U.S. Citizenship
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: JUN 25 2008

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IN RE:

Petitioner:

[Redacted]

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 transactional, regulatory agent, corporation governance and litigation management services. It seeks to employ the beneficiary permanently in the United States as a system analyst / web designer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). 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 beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a foreign equivalent to a U.S. baccalaureate.

On appeal, counsel submitted a brief and additional evidence. While counsel continued to assert that the beneficiary was eligible for the classification sought, counsel also requested that, in the alternative, the beneficiary be considered under a lesser classification. On October 22, 2007, this office issued a notice of intent to dismiss the appeal. In response, counsel continues to assert that the beneficiary is eligible for the classification sought and to request, in the alternative, that the beneficiary be classified as a professional or skilled worker pursuant to section 203(b)(3) of the Act.

In our October 22, 2007 notice, we noted that counsel had not cited a legal authority for the proposition that the director was obligated to offer an opportunity to request a lesser classification or that would allow the petitioner to request a different classification on appeal. As further noted in that notice, the petitioner may not make a material change to a petition that has already been filed in an effort to make an apparently deficient petition conform to Citizenship and Immigration Services (CIS) requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 175 (Commr. 1998). Thus, this decision only pertains to the original classification requested pursuant to section 203(b)(2) of the Act.

Counsel's remaining assertions will be discussed below. For the reasons explained in the body of this decision, we uphold the director's finding that the beneficiary does not possess a foreign equivalent degree to a U.S. baccalaureate. As explained in our October 22, 2007 notice, the lack of a foreign equivalent degree precludes eligibility for the classification sought. We further find that the job offered does not require a member of the professions holding an advanced degree as required under 8 C.F.R. § 204.5(k)(4).

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the

¹ After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

Initially, the petitioner submitted the beneficiary's three-year "Provisional Certificate" for his Bachelor of Science in Physics from the University of Madras. On the Form ETA 750B, the beneficiary indicated that he had also received a "diploma" from Aptech Computer Education. The petitioner submitted an evaluation from Morningside Evaluations and Consulting concluding that the beneficiary's three-year degree from the University of Madras was "substantially similar to those required toward the completion of three years of academic studies leading to a Bachelor's degree from an accredited institution of higher education in the United States." The evaluation then asserts that the beneficiary received a "Higher Diploma in Software Engineering" from Aptech Computer Education and provides:

On the basis of the credibility of the University of Madras, Aptech Computer Education, the number of years of coursework, the nature of the coursework, the grades earned in the coursework, and the hours of academic coursework, it is the judgment of Morningside Evaluations and Consulting that [the beneficiary] has attained the equivalent of a Bachelor of Science in Computer Information Systems degree from an accredited institution of higher education in the United States.

On appeal, the petitioner submitted copies of the higher diploma issued to the beneficiary by Aptech Computer Education as well as the transcript for this coursework. In our October 22, 2007 notice, we requested evidence regarding Aptech's entrance requirements and whether it is accredited by the All-India Council for Technical Education (AICTE) or another authority. In response, counsel concedes that Aptech is not accredited but asserts that enrollment in Aptech "is based on competitive entrance examinations." Counsel further asserts that the beneficiary's foreign education must be equivalent to a U.S. baccalaureate because he was admitted to a U.S. Master's program at the University of Phoenix based on that foreign education.

Eligibility for the Classification Sought

As noted above, the ETA 750 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

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. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B.*

v. Ashkenazy Property Management Corp. 817 F. 2d 74, 75 (9th Cir. 1987)(administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). Even CIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(An agency’s internal guidelines “neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.”)

As explained in our previous notice, a United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Regl. Commr. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) as amended in 1976. At that time, this section provided:

Visas shall next be made available . . . to qualified immigrants who are members of the professions

The Act added section 203(b)(2)(A) of the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that “[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor’s degree with at least five years progressive experience in the professions.” H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (October 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien “must have a bachelor’s degree” when considering equivalency for second preference immigrant visas. We must assume that Congress was aware of the agency’s previous treatment of a “bachelor’s degree” under the Act when the new classification was enacted and did not intend to alter the agency’s interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978)(Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor’s degree).

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:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both 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 (Nov. 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)(2) of the Act as a member of the professions holding an advanced degree 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. *Matter of Shah*, 17 I&N Dec. at 245. 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 "foreign equivalent degree."² In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

In response to our October 22, 2007 notice, counsel asserts that the decision in *Matter of Shah*, 17 I&N Dec. at 245, was based on the lack of evidence "to assist the agency in determining whether the three-year B.S. (special) degree in chemistry at issue was equivalent to a Bachelor's with a major in Chemistry." Counsel further asserts that discrepancies in dates in that matter indicated fraud. While the decision questions the "validity" of the degree issued partway into that alien's studies, the decision also unambiguously states: "Thus, he could only have completed a 3-year course of study, which is not equivalent to a United States baccalaureate degree, usually requiring 4 years of study. The petitioner has failed to establish that the beneficiary's 'B.S. (Special), special subject—

² Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

Chemistry' is equivalent to a United States baccalaureate degree in chemistry." *Id.* Moreover, this decision is completely consistent with the education evaluation submitted, which concluded that the beneficiary's three-year degree was only equal to three years of academic study towards a U.S. baccalaureate.

The evaluator from Morningside Evaluations and Consulting listed his membership in the American Association of Collegiate Registrars and Admissions Officers, AACRAO. Accordingly, as noted in our October 22, 2007 notice, we have reviewed the Electronic Database for Global Education (EDGE) created by 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://accraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

Authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE 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 for download at [www.aacrao.org/publications/guide to creating international publications.pdf](http://www.aacrao.org/publications/guide%20to%20creating%20international%20publications.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.

EDGE provides a great deal of information about the educational system in India. It 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 suggest that, if combined with a three-year degree, the diploma 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.

In our October 22, 2007, we advised the petitioner that, according to Aptech Computer Education's website, www.aptech-education.com/accp.html, the prerequisite for their program is a mandatory

aptitude test. It does not suggest that a three- or even a two-year baccalaureate is required for admission. Nowhere on its website does it indicate that it is accredited by AICTE. As stated above, counsel's response does not assert that Aptech is accredited or that it requires a three-year degree for entrance into its program.

In response to the October 22, 2007 notice, the petitioner submits the beneficiary's Master of Business Administration (MBA) from the University of Phoenix. The petitioner must establish the beneficiary's eligibility as of the priority date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Regl. Commr. 1971). The beneficiary's MBA degree was issued July 31, 2007, nearly four years after the priority date in this matter. Nevertheless, the degree is not submitted for purposes of consideration in and of itself, but as evidence that the beneficiary's prior education, which gained him admission to the MBA program, must be equivalent to a U.S. baccalaureate. The petitioner submits evidence from the University of Phoenix's website demonstrating that admission into the university's graduate programs requires "an undergraduate degree from a regionally accredited or candidate for accreditation, or approved nationally accredited college or university, or a comparable degree from a recognized institution outside the United States."

The petitioner has not demonstrated that the beneficiary's admission into the University of Phoenix's MBA program was unconditional in that it did not require him to complete any additional credits at the University of Phoenix. Moreover, the opinion of one admissions officer at the University of Phoenix, a for-profit institution, is less persuasive than the juried and widespread consensus opinion represented by EDGE.

It remains, the degree from Aptech is not a benchmark above the beneficiary's three-year degree but a second lesser degree. Aptech does not provide credit for the three-year degree or otherwise incorporate the education represented by a three-year degree by requiring the three-year degree for admission.

Our conclusion that the beneficiary's education is not a foreign equivalent degree does not result from a requirement that all of the education takes place at one institution. Clearly, an undergraduate student who transfers credits to Harvard University and subsequently obtains a baccalaureate from Harvard can be said to have a U.S. baccalaureate. That degree from Harvard is presumptive evidence of a baccalaureate without any need to evaluate the underlying education that led to that degree because Harvard requires a certain amount of course credits taken either at Harvard or transferred to Harvard before it will issue a degree. The degree from Aptech, however, is not evidence of a baccalaureate because attainment of the degree does not require four years of education at Aptech or another institution. As stated above, the combination of two lesser degrees will not be considered a foreign equivalent degree to a U.S. baccalaureate degree any more than two baccalaureate degrees can be considered equivalent to a Master's degree.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree.

Job Requirements

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s *de novo* authority has been long recognized by the federal courts. *See, e.g., Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). While the director did not address whether the job required a member of the professions holding an advanced degree, this issue was raised in our October 22, 2007 notice of intent to dismiss and is a second basis for dismissing the appeal.

The regulation at 8 C.F.R. § 204.5(k)(4) provides the following:

(i) **General.** Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor’s Labor Market Information Pilot Program. To apply for Schedule A designation or to establish that the alien’s occupation is within the Labor Market Information Program, a fully executed uncertified Form ETA-750 in duplicate must accompany the petition. **The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.**

(Bold emphasis added.)

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. 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.

CIS 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). CIS must examine “the language of the labor certification job requirements” in order to determine what the job requires. *See generally*

Madany, 696 F.2d at 1015. The only rational manner by which CIS 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). CIS’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). CIS 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.

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: Master’s degree*
Major Field of Study: CS, Engineering, IT, Physics, or related field.

Experience: 3* years in job offered.

Block 15: *Will accept Bachelor’s degree in CS, engineering, IT, Physics, or a related field followed by 5 years of related progressive experience.

*Will accept educational equivalency evaluation prepared by qualified evaluation service or in accordance with 8 CFR § 214.2(h)(4)(iii)(D).

As noted in our October 22, 2007 notice of intent to dismiss, the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) defines, for purposes of a nonimmigrant visa classification, the “equivalence to completion of a college degree” as including, in certain cases, a specific combination of education and experience. The regulations pertaining to the immigrant classification sought in this matter do not contain similar language. In fact, as discussed above, the legislative history for section 203(b)(2) of the Act makes very clear that the alien must have a baccalaureate and may not combine education and experience to demonstrate an equivalency. 56 Fed. Reg. at 60900. Thus, we raised the issue as to whether the job in this matter requires a member of the professions holding an advanced degree as required under 8 C.F.R. § 204.5(k)(4).

In response to our notice, counsel references a letter from Mr. Efren Hernandez III, Director of the Business and Trade Services Branch of CIS’ Office of Adjudications. The letter discusses whether a “foreign equivalent degree” must be in the form of a single degree or whether the beneficiary may satisfy the requirement with multiple degrees. The Office of Adjudications letter is not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter

may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000)(copy incorporated into the record of proceeding). As stated above, the AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.* 817 F. 2d at 75; *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d at 1022.

Counsel further states:

Petitioner acknowledges that the criteria set forth in 8 C.F.R. § 214.2(h)(4)(iii)(D), providing that three years of specialized training and/or work experience can equate to a year of college education, relates to the H-1B nonimmigrant classification and that no corresponding statute or regulation exists relating to immigrant preference classifications. However, relying on the Hernandez guidance and in an effort to ensure that all U.S. workers with a qualifying combination of education from more than one institutions, deemed equivalent to a Bachelor's degree, were given an opportunity to apply for the position, [the petitioner] utilized the only regulatory definition governing educational equivalencies available to define the proper combination of education that would be accepted for the position.

Counsel then asserts that the reference to 8 C.F.R. § 214.2(h)(4)(iii)(D) "in no way expanded the requirements to include" a combination of education and experience. Counsel then cites *Grace Korean United Methodist Church v. Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005) for the proposition that CIS "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." Counsel also cites *Snapnames v. Chertoff*, 2006 WL 3491005 (D. Or. 2006).

The AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. Regardless, we note that *Grace Korean* involved a lesser classification than the one sought in this matter. Counsel's citation to *Snapnames.com* is not persuasive as the judge in that case found that CIS is entitled to deference in interpreting its own regulatory definition of advanced degree. *Snapnames.com, Inc.*, 2006 WL 3491005 at 11.

Even assuming that the phrase "B.A. or equivalent," is open to interpretation as decided in *Grace Korean*, the alien employment certification in this matter did not use that phrase. Rather, the alien employment certification expressly referenced a regulation that, by the plain language of that regulation, permits the equation of experience to education in calculating the equivalence of a college degree. It cannot now be credibly argued that the reference to this regulation as a whole, without limitation to a specific subparagraph of the regulation, does not indicate that all of the

equivalencies defined in that regulation, including experience, would be acceptable in lieu of a baccalaureate. Thus, based on the plain language on the alien employment certification, it is clear that the job certified by DOL does not require an advanced degree professional as defined at 8 C.F.R. § 204.5(k)(2).

The beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree,” and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. In addition, the job does not require a member of the professions holding an advanced degree. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

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.

This denial is without prejudice to the filing of a new petition under a lesser classification.

ORDER: The appeal is dismissed.