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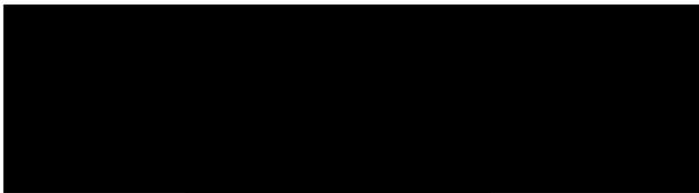
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 28 2010
SRC 07 184 52112

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner filed a Motion to Reopen. On April 15, 2009, the director withdrew his denial of the petition, approved the petition, and certified the matter to the Administrative Appeals Office (AAO). The decision to approve the petition will be withdrawn, and the petition will be denied.

The petitioner claims to be a health care administration business. It seeks to permanently employ the beneficiary in the United States as a team leader. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is October 31, 2003, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

As is set forth in the director's February 23, 2008 denial and the April 15, 2009 certified decision, at issue on appeal is whether the beneficiary is a member of the professions holding an advanced degree. The AAO will also consider whether the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification.²

At the outset, it is useful to discuss the DOL's role in this process. 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

¹Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States. There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

²An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by Federal Circuit Courts.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. See *Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).³ *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.

* * *

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 the DOL that stated the following:

³Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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 [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).

In summary, it is the 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.

Returning to the case at hand, in order to obtain classification in the requested employment-based preference category, the petitioner must establish that the beneficiary is a member of the professions holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(3)

The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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 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.

The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) further requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." The regulations use a singular description of foreign equivalent degree. Thus,

the plain meaning of the regulatory language is that the petitioner must establish that the beneficiary possesses a single degree that is a U.S. baccalaureate degree or its foreign equivalent.⁴

Significantly, the third preference professional classification also contains the requirement of a single degree from a college or university. The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) states:

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.

The AAO cannot conclude that the evidence required to demonstrate that an alien is a second preference advanced degree professional is any less than the evidence required to show that the alien is a third preference professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. Instead, persons who claim to qualify for an immigrant visa by virtue of a combination of education (and/or experience) equating to a U.S. bachelor's degree may qualify as a third preference skilled worker pursuant to Section 203(b)(3)(A)(i) of the Act.

Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).⁵ Further, in the final rule for 8 C.F.R. § 204.5, the legacy Immigration and Naturalization Service (the Service), responded to criticism that the regulation did not allow for the substitution of experience for education. In response, 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

⁴It is noted that the H-1B nonimmigrant visa category regulation permits "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience. 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The regulations pertaining to the immigrant classification sought in this case do not contain similar language.

⁵*Cf.* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, school or other institution of learning relating to the area of exceptional ability")(emphasis added).

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).

In summary, 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 U.S. baccalaureate degree (or foreign equivalent) from a college or university. *See* 8 C.F.R. § 204.5(k)(3)(i)(B).

The record of proceeding contains the beneficiary's diploma and transcript for a three-year bachelor of science degree from Osmania University in Hyderabad, India. The beneficiary's transcript reflects that, in addition to English and Sanskrit in his first and second years, the beneficiary took Chemistry 1, Physics 1, Mathematics 1 and Indian History and Culture in his first year, Chemistry 2, Physics 2, Mathematics 2 and Science and Civilization in his second year, and Chemistry 3 and 4, Physics 3 and 4 and Mathematics 3 and 4 in his third year.

The record contains two evaluations of the beneficiary's bachelor of science degree. The first evaluation, dated January 12, 2008, was prepared by [REDACTED] for European-American [REDACTED]⁶ located in the Commonwealth of Dominica (Linley evaluation).⁷ The second evaluation, also dated January 12, 2008, was prepared by [REDACTED] for [REDACTED] located in England [REDACTED]

[REDACTED] both conclude that the beneficiary's three-year bachelor of science degree from Osmania University is equivalent to a 120 credit hour bachelor of science degree in mathematics and physics from a U.S. institution of higher education. It is noted that the

⁶According to its website, www.thedegree.org/apel.html (accessed September 18, 2009), European-American University, Ltd. awards degrees based on experience.

⁷The evaluation states that [REDACTED] has a canonical diploma of Sacrae Theologiae Professor, equivalent to a Doctorate of Divinity, from St. David's Oecumenical Institute of Divinity. The only mention of this institution on the internet is a reference to its founding in 1985. www.liberalcatholics.org/education.html. This website also has a section dedicated to European-American University, Ltd.

⁸The evaluation states that [REDACTED] has a Doctor of Divinity, but does not indicate the school where he obtained this degree.

evaluations are fundamentally identical, with each evaluation referencing many of the same supporting materials.

The fundamental argument of both evaluations is that a three-year bachelor's degree from India is equivalent to a 120 credit hour U.S. bachelor's degree, because an Indian three-year degree requires the same number of classroom hours (or "contact hours") as a U.S. bachelor's degree. The evaluations claim that a student must attend at least 15 50-minute classroom hours to earn one semester credit hour under the U.S. system. Since U.S. bachelor's degree programs require 120 credit hours for graduation, the evaluations conclude that a program of study with 1800 classroom hours is equivalent to a U.S. bachelor's degree. Since a three-year bachelor's degree from India allegedly requires over 1800 classroom hours, the evaluations conclude that it is equivalent to a U.S. bachelor's degree.

The evaluations base this equivalency formula on the claim that the U.S. semester credit hour is a variant of the "Carnegie Unit." The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject.⁹ For example, 120 hours of classroom time was determined to be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school.¹⁰ This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class.¹¹ According to the foundation's website, the "Carnegie Unit" relates to the number of classroom hours a high school student should have with a teacher, and "does not apply to higher education."¹²

In its analysis of the beneficiary's credentials, [REDACTED] breaks down the subjects listed on the beneficiary's transcript into courses and practicals, and awards credits for each course and practical, concluding that the beneficiary achieved over 120 "contact hours using the Carnegie Unit." The evaluation does not explain how the individual course credit numbers were determined, which vary from 2.6 to 7.8. The beneficiary's transcript does not provide any information as to classroom hours or credits. While [REDACTED] concludes that he has computed the beneficiary's credits to total 120, the total of the credits it assigns is only 117.8. [REDACTED] makes no

⁹The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose charge is "to do and perform all things necessary to encourage, uphold, and dignify the profession of the teacher." <http://www.carnegiefoundation.org/about/index.asp>.

¹⁰<http://www.carnegiefoundation.org/about/sub.asp?key=17&subkey=1874>.

¹¹*Id.*

¹²*Id.*

attempt to assign credits for the beneficiary's individual courses, and merely concludes that the beneficiary's three-year bachelor of science degree is equivalent to a U.S. degree.

The record also contains a letter from the assistant registrar of Osmania University providing the number of hours per week for each course and "practical." The practicals are not listed as separate courses on the beneficiary's transcript. Moreover, this new letter is inconsistent with the beneficiary's previously submitted transcript as Mathematics 4, Physics 4 and Chemistry 4 are not listed as courses in year three or any other year. Moreover, the beneficiary's courses in Indian History and Culture and Science and Civilization are not listed. Finally, the stated hours per week have no correlation with the number of credits assigned in the Linley evaluation. For example, the Linley evaluation assigns 7.8 credits per math course as compared with 5.2 credits for each science course in years one and two, even though the assistant registrar's letter indicates the same number of hours for both math and science in years one and two.

There is no support in the record for the argument that a three-year bachelor's degree from India is equivalent to a U.S. bachelor's degree because both degrees allegedly require an equivalent amount of classroom time. The evaluations fail to provide any peer-reviewed material (or other reliable evidence) confirming that assigning credits based on hours spent in the classroom is applicable to evaluating three-year bachelor of science degrees from India. For example, if the ratio of hours spent studying outside the classroom is different in the Indian and U.S. systems, comparing hours spent in the classroom would be misleading.¹³

Both evaluations also argue that the U.S. and India are members of United Nations Educational, Scientific and Cultural Organization (UNESCO) treaties, and that UNESCO "clearly recommends that the 3 and 4 year degree should be treated as equivalent to a bachelor's degree by all UNESCO members." In support of this claim, the evaluations reference the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention on the recognition of qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same agreement. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. The United States was not a member of UNESCO between 1984 and 2002, and the Recommendation on the Recognition of Studies and Qualifications in Higher Education is not a

¹³See e.g., Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise," at http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf (accessed September 18, 2009)(stating that the Indian system is exam-based instead of credit-based, thus transfer credits from India are derived from the number of exams passed; and that, in India, six exams equates to 30 credit hours).

binding legal agreement to recognize academic qualifications between UNESCO members.¹⁴ Specifically, the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993 contains the language relating to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

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

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

In fact, UNESCO's publication, "The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific" 82 (2d ed. 2004), provides:¹⁵

Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of

¹⁴See <http://www.unesco.org>.

¹⁵<http://unesdoc.unesco.org/images/0013/001388/138853E.pdf>.

India. The [University Grants Commission], [All India Council for Technical Education] and [Association of Indian Universities] are developing criteria and mechanisms regarding the same.

Id. at 84. (Emphasis added.). In summary, reliance on UNESCO for the proposition that a three-year Indian bachelor's degree is equivalent to a four-year U.S. bachelor's degree is misplaced.

Both evaluations include an article titled "Brief History of the American Academic Credit System: A Recipe for Incoherence in Student Learning," by [REDACTED], September 2002. The article discusses evolution and shortcomings of the U.S. credit hour system, and examines the arbitrariness of the credit hour as a purported unit of learning. It is noted that the article's criticism of the semester credit hour is equally applicable to the classroom contact hour. Accordingly, the article undermines the claims of the evaluations, which seek to directly equate the U.S. semester credit hour with the classroom contact hour when comparing bachelor's degrees from different countries.

Both evaluations assert that some U.S. institutions of higher education will consider holders of three-year bachelor's degrees from India for entry into their master's degree programs. However, the evaluations do not address whether those few U.S. institutions that accept three-year degrees from India do so subject to additional conditions, such as requiring the degree holder to complete extra credits prior to admission. Further, the fact that some U.S. graduate programs accept three-year degrees has little relevance to whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate.

Both evaluations also state that some U.S. institutions offer three-year bachelor's degree programs. It is noted that there exists accelerated degree programs in the United States. However, this fact provides no useful information about the degree obtained by the beneficiary in India. At issue is the actual equivalence of the specific degree the beneficiary obtained, not whether it is possible to obtain a baccalaureate in less than four years in an accelerated program in the United States. The beneficiary did not compress his studies to obtain a degree in less than four years from an institution that grants four-year degrees, and, even if this were the case, the petitioner would need to establish that the beneficiary's accelerated degree is equivalent to a four-year, 120 credit hour U.S. bachelor's degree.

Both evaluations also cite a Council of Graduate Schools survey concerning the acceptance of three-year degrees. The survey shows that a small number of U.S. graduate programs accept three-year degrees from India. The survey does not reflect how many of the limited number of institutions that accept three-year degrees from outside of Europe do so provisionally. If the three-year Indian baccalaureate were truly a foreign equivalent degree to a U.S. baccalaureate, the vast majority of U.S. institutions would accept these degrees for graduate admission without provision. The cited survey underlines that there is not wide acceptance within the academic community of three-year degrees for admission into graduate schools. The evaluations provide no study or report that conclusively states that all Indian three-year degrees are equivalent to a U.S. bachelor's degree, or

even that Indian three-year degrees are generally accepted for admission into U.S. graduate degree programs.

Both evaluations cite an article from World Education News & Reviews (WENR), titled "Evaluating the Bologna Degree in the U.S."¹⁶ WENR is a monthly newsletter published by World Education Services (WES), a credentials evaluation organization. The newsletter article includes a brief assessment of three-year Bologna degrees from Europe. The article states that U.S. bachelor's degrees are based on the completion of 120 semester credits, and are generally completed over a four-year period. According to the article, approximately half of a U.S. bachelor's degree is devoted to general studies, and the remaining credits are devoted to the student's major and related subjects. In contrast, the Bologna degrees "are more heavily concentrated in the major – or specialization – and that the general education component which is so crucial to U.S. undergraduate education is absent." The article compared a bachelor's degree in business administration from Indiana University in Bloomington, and a business administration Bologna degree from the Bocconi University in Milan, Italy. The article concludes, after assessing the requirements for admission to a Bologna degree program, its contents and structure, and the function that the credential is designed to serve in the home system, that the Bologna degree is "functionally equivalent to a U.S. bachelor's degree." However, this non-peer reviewed article from a newsletter is irrelevant as it provides no evidence for why the beneficiary's bachelor's degree from India is equivalent to a U.S. bachelor's degree.

The Kersey evaluation also cites to an article titled "Does the Value of Your Degree Depend on the Color of Your Skin?" which the author co-wrote with [REDACTED]. The record contains no evidence that this article was published in a peer-reviewed publication or anywhere other than on the internet. The article states that some British and U.S. colleges and universities accept three-year bachelor's degrees for admission to graduate school, but acknowledges that others do not. The article concedes:

None of the members of [the National Association of Credential Evaluation Services] who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited institution in the United States, although we heard anecdotally that one, [World Education Services], had been interested in doing so.

In this process, we encountered a number of the objections to equivalency that have already been discussed.

[REDACTED],
commented thus,

"Contrary to your statement, a degree from a three-year "Bologna Process" bachelor's degree program in Europe will NOT be accepted as a degree by the majority of

¹⁶www.wes.org/eWENR/04march/Feature.htm.

universities in the United States. Similarly, the majority do not accept a bachelor's degree from a three-year program in India or any other country except England. England is a unique situation because of the specialized nature of Form VI."

* * *

International Education Consultants of Delaware, Inc., raise similar objections to those raised by ECE,

"The Indian educational system, along with that of Canada and some other countries, generally adopted the UK-pattern 3-year degree. But the UK retained the important preliminary A level examinations. These examinations are used for advanced standing credit in the UK; we follow their lead, and use those examinations to constitute [an] additional year of undergraduate study. The combination of these two entities is equivalent to a 4-year U.S. Bachelor's degree.

The Indian educational system dropped that advanced standing year. You enter a 3-year Indian degree program directly from Year 12 of your education. In the US, there are no degree programs entered from a stage lower than Year 12, and there are no 3-year degree programs. Without the additional advanced standing year, there's no equivalency.

In addition, the Kersey evaluation cites to the article "Three Year Undergraduate Degrees: Recommendations for Graduate Admission Consideration", ADSEC News, April 2005. The Kersey evaluation claims that the article concludes that, because the U.S. is willing to consider three-year degrees from Israel and the European Union, Indian bachelor's degree holders should be provided the same opportunity to pursue graduate education in the U.S. However, the article does not suggest that Indian three-year degrees are comparable to a U.S. baccalaureate. Instead, the article proposes accepting a *first class honors* three-year degree following a secondary degree from a Central Board of Secondary Education or Council for the Indian School Certificate Examinations program, or a three-year degree *plus a post graduate diploma* from an institution that is accredited or recognized by the National Assessment and Accreditation Council and/or the All India Council for Technical Education. Therefore this non-peer reviewed article from a newsletter directly undermines the argument that three-year degrees from India are, as a whole, equivalent to four-year U.S. bachelor's degrees.

In further support of its claim that a three-year bachelor's degree from India is equivalent to a U.S. baccalaureate, the Kersey evaluation refers to three attached letters. The first letter is from [REDACTED] addressed to [REDACTED]

[REDACTED] The letter states that a three-year degree from India is equivalent to a U.S. bachelor's degree. This letter states that this opinion is based on the number of contact hours in each program, the UNESCO treaty, and the fact that Bologna degrees from Israel, Canada, and Europe are accepted by U.S. colleges and universities. The second letter is from [REDACTED] Sant Gadge Maharaj College of Commerce & Economics, addressed to [REDACTED] The letter states that

a three-year degree from India is equivalent to a U.S. bachelor's degree. The letter states that this conclusion is based on the author's opinion that Indian degrees require over 1800 contact hours. The third letter is from [REDACTED], former professor at Mumbai University, also addressed to Ms. [REDACTED] states that a three-year degree from India is equivalent to a U.S. bachelor's degree based on the author's opinion that Indian degrees require over 1800 contact hours. There is no evidence in the record demonstrating that these individuals are qualified to determine whether a foreign academic credential is equivalent to a U.S. baccalaureate.

[REDACTED] also cites to *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. Nov. 30, 2006). In that case, the alien not only had a credential beyond a three-year degree, the judge determined that even with that extra credential, the alien was only eligible as a skilled worker pursuant to section 203(b)(3) of the Act, and *not* as either a professional or an advanced degree professional pursuant to section 203(b)(2) of the Act. *Id.* Accordingly, this case provides no support for the conclusion of the Kersey evaluation.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Given the inconsistencies between the statements in the evaluations and the evidence in the record, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO 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."¹⁷ 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." *Id.*

EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO.¹⁸ Authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE must work with a publication

¹⁷ <http://www.aacrao.org/about>.

¹⁸ [REDACTED] of International Education Services, "AACRAO EDGE Login," <http://aacraoedge.aacrao.org/index.php>.

consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.¹⁹ 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 that a three-year bachelor of science degree from India represents the attainment of a level of education comparable to three years of university study in the United States. This information contradicts the evaluations submitted.

The AAO also reviewed AACRAO's Project for International Education Research (PIER) publications: the *P.I.E.R. World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* (1997). We note that the 1997 publication incorporates the first degree and education degree placements set forth in the 1986 publication. *Id.* at 43. As with EDGE, these publications represent conclusions vetted by a team of experts rather than the opinion of an individual. One of the PIER publications also reveals that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. *A P.I.E.R. Workshop Report on South Asia* at 180 explicitly states that "transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year." The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate "may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis." This information also undermines the evaluations submitted, both of which attempt to assign credits hours for the beneficiary's three-year baccalaureate that are close to or beyond the 120 credits typically required for a U.S. baccalaureate.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

On October 30, 2009, the AAO sent the petitioner a notice of intent to deny the petition because the evidence in the record of proceeding did not establish that the beneficiary's three-year bachelor of science degree from India is equivalent to a U.S. bachelor's degree.

In response, the petitioner submitted a new academic credentials evaluation from [REDACTED] dated November 24, 2009.²⁰ The Danzig evaluation states that the beneficiary's three-year bachelor's

¹⁹"An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available at www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

²⁰[REDACTED] states that [REDACTED] has a master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure Robert de Sorbon, but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr, Ecole Superieure Robert de Sorbon awards degrees based on past experience. [REDACTED] is also

degree from Osmania University is equivalent to a four-year U.S. bachelor of science degree in Mathematics and Physics. The evaluation states that some foreign three-year degrees are accepted as equivalent to a U.S. bachelor's degree; that some U.S. graduate programs accept applicants with three-year bachelor's degrees; and that the Indian three-year degree has as many classroom hours as a U.S. four-year bachelor's degree. These arguments repeat those made in [REDACTED] evaluations discussed above. [REDACTED] evaluation then provides a course-by-course analysis of the beneficiary's transcript, converting the beneficiary's purported classroom hours into credit hours. Again, this approach was advocated in [REDACTED] evaluations as discussed above. Using this methodology, [REDACTED] evaluation assigns up to 10 credit hours for a single course on the beneficiary's transcript, with many courses being assigned 8 credits.

As is stated above, USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea*, 19 I&N Dec. 817.

The Danzig evaluation does not address the findings of EDGE or explain why the conclusions of EDGE differ from her evaluation. It is unclear how [REDACTED] concludes that the beneficiary's field of study is in Mathematics and Physics, when the beneficiary completed far more courses and credits in Chemistry than Mathematics. Further, the validity of [REDACTED] methodology of converted purported "contact" hours into academic credit is unsupported.

In light of the above, it is concluded that the academic credentials evaluation submitted by the petitioner in response to the notice of intent to deny does not establish that the beneficiary possesses a foreign degree that is equivalent to a U.S. bachelor's degree. Accordingly, the beneficiary cannot be classified as a member of the professions, and the petition must be denied.

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. at 159; *see also Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). In the instant case, the priority

states that she is a professor at Marquess College of London, where she oversees standards for granting college credit based on past experience. [REDACTED] states that she is a member of the American Evaluation Association (AEA), the Association of International Educators, and the European Association for International Education (EAIE). The record does not indicate what these organizations require for membership, and their websites do not indicate that anything other than the payment of dues for membership is required. For example, the bylaws for the AEA at <http://www.eval.org/aboutus/bylaws.asp>, states: "Any individual interested in the purposes of the Association shall be eligible for membership. Members are defined as those who have completed an application form, received acknowledgment of membership from the Association, and paid the currently stipulated membership dues." Membership in organizations that only require the payment of dues does not confer any expertise.

date is October 31, 2003, which is the date the labor certification was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d). In evaluating the requirements for the offered position, USCIS must look to the job offer portion of the labor certification. 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, *Mandany v. Smith*, 696 F.2d 1008; *K.R.K. Iwine, Inc. v. Landon*, 699 F.2d 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1st Cir. 1981).

The required education, training, experience and special requirements for the offered position are set forth at Part A, Items 14 and 15, of Form ETA 750. In the instant case, the labor certification states that the position has the following minimum requirements:

Education: "4" year bachelors degree in math, physics or computer science.

Training: None required.

Experience: Five years of experience in the job offered or in the related occupation of software development.

Other Special Requirements: Five years of information systems experience, including two years of software development experience in health care.

It is noted that the labor certification explicitly requires an individual with a four-year bachelor's degree. As is explained in detail above, the petitioner has not established that the beneficiary possesses a foreign degree that is equivalent to a U.S. bachelor's degree. It also has not been established that the beneficiary attended four years of college or university. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The record does not establish that the beneficiary is a member of the professions holding an advanced degree. The record also does not establish that the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification. The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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

ORDER: The director's decision to approve the petition is withdrawn. The petition is denied.