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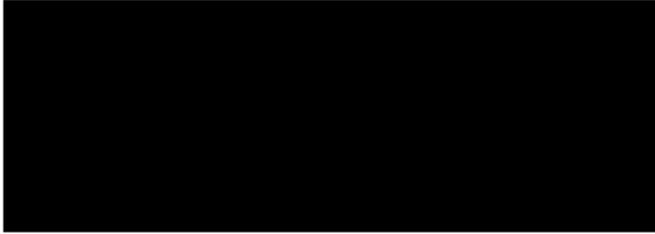
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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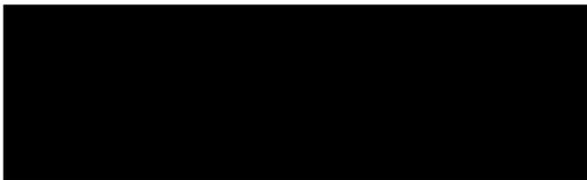


FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: OCT 13 2010

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen..

Thank you,

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 is a petroleum refiner and marketer. It seeks to permanently employ the beneficiary in the United States as a systems specialist. 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).

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 January 28, 2004, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

As set forth in the director's July 31, 2007 denial of the petition, the primary issue in this case is whether the beneficiary possesses a single degree from a college or university that is equivalent to a U.S. bachelor's degree. The AAO will also consider whether the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification.<sup>1</sup>

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

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<sup>1</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

<sup>2</sup> The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

At the outset, it is important to provide an overview of the general process of procuring an employment-based immigrant visa and the respective roles of DOL and U.S. Citizenship and Immigration Services (USCIS).

As noted above, the labor certification is certified by the DOL. The DOL's role in this process is defined by section 212(a)(5)(A)(i) of the Act, which states:

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.

It is significant that none of the responsibilities assigned to the DOL by the Act or the implementing regulations at 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).<sup>3</sup> *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.

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

*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 (9<sup>th</sup> Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

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

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

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

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

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

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

Section 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.

In order to classify the beneficiary in the requested preference category, the petitioner must establish that the beneficiary is an advanced degree professional.<sup>4</sup> The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as follows:

[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.

In the instant case, the record of proceeding contains the following documents pertaining to the beneficiary's education:

- Diploma and transcripts for a three-year bachelor of science degree in physics from Mahatma Gandhi University, India; and
- One-year postgraduate diploma in computer applications from Micro Compu-Data Systems Institute, India.

The record contains two fundamentally identical evaluations of the beneficiary's three-year bachelor's degree. The first evaluation, dated May 25, 2007, was prepared by [REDACTED] for [REDACTED] (evaluation).<sup>5</sup> The second evaluation, dated May 24, 2007,

<sup>4</sup> 8 C.F.R. § 204.5(k)(3).

<sup>5</sup>The author of the [REDACTED] evaluation, [REDACTED], indicates that she 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](http://www.sorbon.fr), Ecole Superieure Robert de Sorbon awards degrees based on past experience. [REDACTED] is also 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

was prepared by [REDACTED] evaluation). Both evaluations state that the beneficiary's three-year bachelor of science degree in physics is equivalent to a four-year U.S. bachelor of science degree in computer science.

The stated methodology of the [REDACTED] evaluation is to verify the recognition of the institution by the country's Ministry of Education; consider the content of the program, the number of years of full time study, and the perception of the degree in the home country; and to review United Nations Educational, Scientific and Cultural Organization (UNESCO) treaties and "standards of Good Practices." Further, "[w]here an equivalent degree has not been obtained, credits towards a degree are based on submitted academic records, which provide either the unit credits or the clock hours of instruction." Finally, the evaluation of transfer credits "is based on the assumption that *one-year of study or its equivalency in another country is worth no more than one year of credit at a United States institution.*" (Emphasis added).

The [REDACTED] evaluation makes four basic arguments in support of its assertion that Indian three-year bachelor's degrees are equivalent to U.S. four-year bachelor's degrees. First, the [REDACTED] evaluation notes 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 evaluation does 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.

Second, the [REDACTED] evaluation states 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.

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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> (accessed on February 24, 2010), 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.

Third, the [REDACTED] evaluation cites an article from World Education News & Reviews (WENR), titled "Evaluating the Bologna Degree in the U.S."<sup>6</sup> 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.

Fourth, the [REDACTED] evaluation notes that the U.S. and India are both UNESCO members, and that UNESCO recommends that the three- and four-year degree should be treated as equivalent to a bachelor's degree by all UNESCO members. However, the [REDACTED] evaluation provides no evidentiary support for this claim. 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:<sup>7</sup>

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 India. The [University Grants Commission], [All India Council for Technical

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<sup>6</sup> [www.wes.org/eWENR/04march/Feature.htm](http://www.wes.org/eWENR/04march/Feature.htm) (accessed on September 26, 2010).

<sup>7</sup> <http://unesdoc.unesco.org/images/0013/001388/138853E.pdf> (accessed on September 26, 2010).

Education] and [Association of Indian Universities] are developing criteria and mechanisms regarding the same.

*Id.* at 84. (Emphasis added.). Accordingly, the [redacted] evaluation's 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.

The [redacted] evaluation also argues at length that three-year bachelor's degrees from India are equivalent to U.S. four-year bachelor's degrees, but fails to set forth a detailed analysis as to why the beneficiary's degree is equivalent to a U.S. four-year bachelor's degree.

The fundamental argument of the [redacted] evaluation is that the U.S. institutions of higher education have adopted a variant of the "Carnegie Unit" as a measure of academic credit. According to the [redacted] evaluation, 15 50-minute classroom hours equals one semester credit hour. Since U.S. bachelor's degree programs require 120 credit hours for graduation, the [redacted] evaluation claims that a program of study with 1800 classroom hours (or "contact 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 [redacted] evaluation concludes that it is equivalent to a U.S. bachelor's degree.

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

The [redacted] evaluation provides no peer-reviewed material confirming that assigning credits solely based on hours spent in the classroom is applicable to the Indian tertiary education system.

The [redacted] evaluation cites to an article titled [redacted] which the author co-wrote with [redacted] the author of the [redacted] evaluation. 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.

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 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."

\* \* \*

., 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 evaluation cites to the article "Three Year Undergraduate Degrees: Recommendations for Graduate Admission Consideration", ADSEC News, April 2005. The 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. bachelors degrees.

The evaluation also references 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 binding legal agreement to recognize academic qualifications between UNESCO members. See <http://www.unesco.org> (accessed September 24, 2010).

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 and 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 for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. 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.

As is explained above in the analysis of the [REDACTED] evaluation, the UNESCO publication, "The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific" 82 (2d ed. 2004) states that no agreements exist that bind India and other governments or universities to recognize all degrees of all the universities either on a mutual basis or on a multilateral basis.

As with the [REDACTED] evaluation, the [REDACTED] evaluation states that some U.S. institutions offer three-year bachelor's degree programs. As is discussed above, the existence of accelerated programs in the United States is not useful in evaluating the equivalence of the beneficiary's degree from India. The [REDACTED] evaluation also notes that some U.S. colleges and universities will consider holders of three-year bachelor's degrees from India for entry into their master's degree programs. Again, this information has little to do with whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate.

The [REDACTED] evaluation also cites an Association of International Educators survey and a Council of Graduate Schools survey concerning the acceptance of three-year degrees. The surveys show that a small number of U.S. graduate programs accept three-year degrees from India. The surveys do 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 surveys underline that there is not wide acceptance within the academic community of three-year degrees for admission into graduate schools. The [REDACTED] evaluation provides 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.

The [REDACTED] evaluation cites an article titled [REDACTED]

[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 evaluation, as it seeks to directly equate the semester credit hour with the classroom contact hour when determining equivalency.

The record also contains evaluations from World Education Services, Inc. and Foreign Consultants, Inc. pertaining to individuals other than the beneficiary. These evaluations are not relevant to this case and will not be considered here.

Finally, it is noted that both evaluations conclude that the beneficiary's three-year bachelor of science degree in physics is equivalent to a U.S. bachelor of science degree in computer science despite the fact that the beneficiary's transcript does not contain computer-related courses.

The record also contains two evaluations of the beneficiary's credentials by [REDACTED] of [REDACTED], dated June 26, 2000 and July 16, 2007. The 2000 [REDACTED] evaluation

states that the beneficiary's three-year bachelor of science degree is equivalent to a four-year U.S. bachelor of science degree in an unspecified field of study. The evaluation further states that the beneficiary's three-year degree, together with his one-year post graduate diploma in computer applications from [REDACTED] (in addition to the completion of several computer-related certificate courses) is equivalent to a U.S. bachelor of science degree in computer science. The 2007 [REDACTED] evaluation states that the beneficiary's three-year bachelor of science degree is equivalent to a four-year U.S. bachelor of science degree in physics; and the three-year degree, together with the beneficiary's one-year post graduate diploma, is equivalent to a U.S. bachelor of science degree in physics and computer science.

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)).

It is noted that a United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 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, 101<sup>st</sup> Cong., 2<sup>nd</sup> Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at \*6786 (Oct. 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).

Given the inconsistencies and issues with the submitted evaluations, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). EDGE provides another source to consider in the evaluation of foreign credential equivalencies. AACRAO, according to its website at [www.aacrao.org](http://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 its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials."<sup>8</sup>

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.<sup>9</sup> 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. According to EDGE, a three-year bachelor of science degree from India "represents attainment of a level of education comparable to two to three years of university study in the United States."<sup>10</sup>

EDGE also discusses postgraduate diplomas, for which the entrance requirement is completion of a three-year baccalaureate. EDGE provides 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."<sup>11</sup> However, the "Advice to Author Notes" provides:

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<sup>8</sup> <http://aacraoedge.aacrao.org/register/index/php>.

<sup>9</sup> *See An Author's Guide to Creating AACRAO International Publications*, 5-6 (First ed. 2005), at [www.aacrao.org/publications/guide\\_to\\_creating\\_international\\_publications.pdf](http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf) (accessed September 24, 2010).

<sup>10</sup> <http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=128> (accessed September 24, 2010).

<sup>11</sup> <http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=131> (accessed September 24, 2010).

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.

*Id.* Therefore, it is concluded that the beneficiary does not possess any "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." In order to qualify as a member of the professions holding an advanced degree, the petitioner must establish that the beneficiary possesses a U.S. bachelor's degree or foreign equivalent in addition to five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(2).

The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) 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.<sup>12</sup>

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.

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<sup>12</sup> It 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.

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).<sup>13</sup>

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 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).

Therefore, the petitioner must establish that the beneficiary's postgraduate diploma was issued by a college or university. There is no evidence in the record that Micro Compu-Data Systems Institute was a college or university at the time the diploma was issued. In addition, there is no evidence that completion of a three-year bachelor's degree is required for admission into the Micro Compu-Data Systems Institute postgraduate diploma program.

Accordingly, on March 25, 2010, the AAO issued a Request for Evidence (RFE) instructing the petitioner to submit evidence that establishes that the beneficiary's postgraduate diploma (1) was from a recognized college or university *on the date of issuance*; (2) *required* completion of a three-year bachelor's degree for admission into the program of study; and (3) is, *by itself*, the foreign

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<sup>13</sup> 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).

equivalent of a bachelor of science degree issued by an accredited college or university in the United States.

On May 7, 2010, counsel submitted a response to the RFE. The response states that admission to Micro Compu-Data Systems Institute's postgraduate diploma program requires a three-year bachelor's degree. In support of this claim, counsel submits a document from MCS-BVL Computer Institute stating that its Postgraduate Diploma in Computer Applications has duration of 12 months and "Eligibility: Graduation." This document does not identify the admission requirements at the time the beneficiary was accepted into the program. In addition, the document does not specify that at least a three-year bachelor's degree is required for admission. Presumably, "Graduation" could refer to completion of a two-year bachelor's degree.

Further, counsel concedes that Micro Compu-Data Systems Institute is not a state college or university, but it is a "college/university-level institution" that has the status of a "deemed university." Counsel argues that Micro Compu-Data Systems Institute is "fully accredited by the Department of Electronics Accreditation of Computer Courses (DOECC)," which is "a joint program of the All India Council for Technical Education (AICTE) and the Department of Information Technology for the government of India."<sup>14</sup> Accordingly, counsel argues that, per the EDGE report, the beneficiary's postgraduate diploma represents attainment of a level of education comparable to a bachelor's degree in the United States. Finally, counsel notes that the beneficiary received an MBA degree from the University of Texas in San Antonio on May 10, 2008.

Even if the AAO accepts counsel's argument that admission to Micro Compu-Data Systems Institute's postgraduate diploma program requires a three-year bachelor's degree, and that it was an accredited institution approved by AICTE, this merely establishes that, according to EDGE, the postgraduate diploma "represents attainment of a level of education comparable to a bachelor's degree in the United States." This conclusion is supported by the fact that the beneficiary was admitted into the MBA program at the University of Texas in San Antonio. However, as is explained in detail above, this is not sufficient for classification as an advanced degree professional. Counsel must also establish that Micro Compu-Data Systems Institute is an accredited college or university. Counsel does not claim, and the evidence in the record does not establish, that Micro Compu-Data Systems Institute is a college or university.

The beneficiary obtained the postgraduate diploma in 1994 following completion of studies in November 1993. According to the evidence submitted by counsel, Micro Compu-Data Systems Institute is a "Computer Training Center" that was only fully accredited by DOEACC Society in 2007, after the beneficiary obtained the postgraduate diploma. See [http://doeacc.edu.in/jsp/state\\_accr/kerala.htm](http://doeacc.edu.in/jsp/state_accr/kerala.htm) (accessed September 20, 2010). Further, contrary to

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<sup>14</sup> It is noted that the DOEACC joint scheme with AICTE and India's Department of Information Technology is "to develop quality manpower in IT by utilizing the expertise available with the *non-formal computer training institutes*." (Emphasis added). See [http://www.doeacc.info.doeacc\\_scheme.php](http://www.doeacc.info.doeacc_scheme.php) (accessed September 20, 2010).

counsel's claim, Micro Compu-Data Systems Institute is not a "deemed university." See <http://www.ugc.ac.in/inside/deemeduniv.html#kerala> (accessed September 20, 2010).

According to the Micro Compu-Data Systems Institute website, it provides "quality computer training" and "state-of-the-art Internet solutions." See <http://www.kerala.com/mcs/profile.htm> (accessed September 20, 2010). In addition to providing training, it "is the sales and development partner of Satyam Infoway Ltd., the first private Internet Service Provider (ISP) of India." See [http://www.kerala.com/mcs/i\\_solutions.htm](http://www.kerala.com/mcs/i_solutions.htm) (accessed September 20, 2010). Micro Compu-Data Systems Institute provides computer training as well as internet-related computer services. It is not a college or university.

Therefore, because the beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree from a college or university, 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.

### **Qualifications for the Job Offered**

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must 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. 158, 159 (Acting Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). 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 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. Coorney*, 661 F.2d 1 (1<sup>st</sup> Cir. 1981).

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). 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]." *Id.* at 834.

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. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). Thus, 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.* at \*7.

The minimum education, training, experience and skills required to perform the duties of the offered position is set forth at Part A of the labor certification. In the instant case, the labor certification states that the position of has the following minimum requirements:

EDUCATION

College: 4 years

College Degree Required: Bachelors

Major Field of Study: Business Administration, Computer Science

TRAINING: None

EXPERIENCE: Five (5) years in the related occupation of "computer programming and design - petroleum industry experience preferred."

OTHER SPECIAL REQUIREMENTS:

Experience must consist of Visual Basic .NET, C#, MS Word, Excel, Access, SQAL, relational databases in Oracle and Windows. COM/DCOM/Active X, object oriented programming, object development into web pages, Oracle distributed database concepts, Oracle PLSQL & refinery /operations preferred. Must be able to deliver enhanced functionality new implementations & continuous support within time frame while preserving systems integrity. Able to sustain max. performance levels in a high stress, high expectation and high demand position. Must be able to travel and work overtime as required. Competent to work on most phases of application systems analysis and programming activities, but requires instructions and guidance in other phases.

The record contains three employment experience letters. Evidence relating to qualifying experience shall be in the form of letters from current or former employers and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien. 8 C.F.R. § 204.5(g).

The first letter, dated July 23, 2003, is by [REDACTED] in San Antonio, Texas. The letter states that the company employed the beneficiary as a Sr. Software Engineer from August 2000 through May 2003. The letter does not state whether the beneficiary was employed on a full-time basis. The second letter, dated March 20, 1999, is by [REDACTED]. The letter states that the company employed the beneficiary as part of its software development team since January 1995. The letter does not state the end date of the beneficiary's employment. The letter does not state whether the beneficiary was employed on a full-time basis. The third letter, dated March 29, 2004 by [REDACTED]. The letter states that the company employed the beneficiary on a full-time basis as an Analyst Programmer from November 28, 1999 through August 27, 2000.

Taken together, the letters do not establish that the beneficiary possessed five years of experience in the related occupation of computer programming and design. Two of the three letters do not state whether the beneficiary's employment was on a full-time basis, Further, the letters do not

specifically establish that the beneficiary possessed all of the "other special requirements" set forth on the labor certification by the priority date, including: experience with SQAL, MS Word and Excel; ability to deliver enhanced functionality, new implementations and continuous support within time frame while preserving systems integrity; and competence to work on most phases of application systems analysis activities.<sup>15</sup>

Thus, the petitioner has not established that the beneficiary possesses the experience and other special requirements required to perform the proffered position. 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)).

An 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 at 1043, *aff'd*, 345 F.3d 683; *see also Soltane v. DOJ*, 381 F.3d at 145 (noting that the AAO conducts appellate review on a *de novo* basis).

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 appeal is dismissed.

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<sup>15</sup> It is also noted that the petitioner has failed to establish that the beneficiary possesses some of the "other special skills" on the labor certification that are listed as "preferred." These preferred skills include object development into web pages, Oracle distributed database concepts, and Oracle PLSQL.