U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship and Immigration Services

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DATE: OCT 04 2011

OFFICE: NEBRASKA SERVICE CENTER

FILE:

IN RE: Petitioner:
Beneficiary:

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

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

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

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

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is an international banking concern. It seeks to employ the beneficiary permanently in the United States as "Manager - [redacted] Marketing" pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL).

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

Upon reviewing the petition, the Director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director found that the beneficiary did not possess a master's degree in business administration (M.B.A.) or a related field, or a foreign equivalent degree. The Director also found that the beneficiary did not possess a bachelor's degree in business administration plus five years of experience in the specialty, as required to qualify as an advanced degree professional under the above regulation.

On appeal, counsel asserts that the beneficiary's certificate from The Indian School of Business in Hyderabad, India, upon completion of its "Post Graduate Programme in Management" is equivalent to an M.B.A. or a master's degree in a related field from a university in the United States.

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.

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.[1]

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[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). In this case, the petitioner supplemented the materials submitted on appeal with additional documentation submitted in response to a Notice of Derogatory Information and Request for Evidence issued by the AAO on June 8, 2011.

The first issue on appeal is whether the beneficiary's post-graduate certificate from [redacted] is a foreign degree equivalent to a U.S. master's degree. The second issue is whether the beneficiary meets the job requirements of the proffered position as set forth on the ETA Form 9089 (labor certification).

Eligibility for the Classification Sought

As noted above, the ETA Form 9089 in this matter is certified by the DOL. The DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. *See* Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith,* 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

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 Immigration Act of 1990 Act added section 203(b)(2)(A) to the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

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

Significantly, the statutory language used prior to *Matter of Shah,* 17 I&N Dec. at 244, is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (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 (advanced degree professional) immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (INS, or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[2] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus five years of progressive experience in the specialty). *See* 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or

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

experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. *See* 56 Fed. Reg. at 60900.

The degree must also be from a college or university. Specifically, 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" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." The AAO cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F. 3d 28, 31 (3rd Cir. 1995) *quoted in APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003) (the basic tenet of statutory construction, to give effect to all provisions, is equally applicable to regulatory construction). 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).[3] The evidence of record, including entries from the ISB's website, indicate that the Indian School of Business is not a college or university and does not issue degrees.

The record shows that the beneficiary earned a bachelor of technology degree from the Indian Institute of Technology in Bombay, India, on August 6, 1999, after completing four years of study. The record also shows that the beneficiary was awarded a certificate by [redacted] on [redacted], upon completion of a "Post Graduate Programme in Management" that comprised one full calendar year of studies.

As evidence of the U.S. equivalency of the beneficiary's education in India, the petitioner has submitted evaluations of his academic credentials from (1) [redacted] of [redacted] in New York City, and (2) [redacted] of [redacted] also in New York City. Both concluded that the beneficiary's education – in particular, his post-graduate program in management at the [redacted] – was equivalent to a Master of Science Degree in Marketing and Finance from an accredited institution of higher learning in the United States.

As noted by the AAO in its Notice of Derogatory Information and Request for Evidence (NDI/RFE) sent to the petitioner on June 8, 2011, there were some inaccuracies in these evaluations. In the initial evaluation from [redacted] prepared in 2005, the ISB was identified as an accredited

[3] *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").

institution, which it is not. Mr. [redacted] corrected this mistake in a second evaluation he prepared in 2008. In the evaluation from Dr. [redacted] also prepared in 2008, the post-graduate management program at the ISB was described as a two-year program, which it is not. The beneficiary's transcript and the school's academic calendar show that the program spans one calendar year. Evaluations of a person's foreign education by credentials evaluation organizations are utilized by U.S. Citizenship and Immigration Services (USCIS) as advisory opinions only. Where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept it or may give it less weight. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *see also Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The AAO has consulted the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." http://www.aacrao.org/about/. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." http://aacraoedge.aacrao.org/register/. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.[4] 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.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[5]

According to EDGE, a Bachelor of Technology degree in India is awarded upon completion of four years of tertiary study beyond the Higher Secondary Certificate (equivalent to a U.S. high school

[4] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

[5] In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

diploma). It is comparable to a bachelor's degree in the United States. Thus, the beneficiary's bachelor of technology degree from the Indian Institute of Technology is equivalent to a bachelor's degree in that field in the United States. It is not, however, equivalent to a U.S. bachelor's degree in business administration, or a related field such as marketing or finance.

With regard to the beneficiary's certificate from [redacted] School of Business received upon completion of the Post-Graduate Programme in Management, this credential appears to fall within the EDGE category (though not a perfect match) of post-graduate diplomas awarded after one year of study beyond a bachelor's degree. As such, it would not be equivalent to an M.B.A. in the United States, which is generally a two-year degree. By way of comparison, EDGE specifically recognizes the post-graduate diploma from another [redacted] school – the [redacted] Institute of Management – as comparable to a master's degree in the United States. Unlike the ISB, the [redacted] Institute of Management is an accredited institution[6] and its post-graduate management program is two full years in length. While the ISB's post-graduate program is more than one academic year in length, it is less than two. Accordingly, there is validity to the EDGE assessment that it is not equivalent to a master's degree program in the United States.

On appeal counsel asserts that EDGE is an incomplete tool, not the holy grail, and therefore should not be accorded undue stature in determining educational equivalencies. Counsel also contends that accreditation is voluntary in India, and therefore should not be a decisive factor in evaluating the equivalency of Indian and U.S. educational credentials.[7] Since EDGE is a work in progress whose database is continually open to updating and expansion, counsel contends that the lack of specific information about the Indian School of Business should not exclude that institution's post-graduate program in management from being considered as equivalent to a U.S. master's degree program. Counsel cites multiple factors in support of its claim that the ISB's post-graduate management program is equivalent to an M.B.A. in the United States, including the high ranking it is accorded on the Financial Times listing of top business schools worldwide, the comparability of its admission requirements and course content with the Kellogg and Wharton Schools, the distinguished academicians and businessmen on the ISB staff, and the high level placements of ISB graduates.

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[6] The [redacted] of Management is accredited by the All[redacted] Council for Technical Education (AICTE), which was established in November 1945 as a "national level Apex Advisory Body to conduct survey[s] on the facilities on technical education and to promote development in the country in a coordinated and integrated manner." *See* http://www.aicte-india.org/aboutus.htm (accessed August 3, 2011). AICTE has the "statutory authority for planning, formulation and maintenance of norms and standards, quality assurance through accreditation, funding in priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring coordinated and integrated development and management of technical education in the country." *Id.* As AICTE ensures the foundation of norms and standards, the educational value of an unaccredited institution cannot be properly assessed.

[7] Though counsel minimizes the importance of accreditation, he acknowledges that the petitioner has begun the process of seeking accreditation by the Association to Advance Collegiate Schools of Business (AACSB).

Regardless of the value and high regard of the ISB's post-graduate program in management, counsel has not established that the certificate awarded by the ISB is equivalent to a master's degree in business administration from a U.S. university. On its website the ISB touts its one-year post-graduate program (PGP) as "[s]pecially designed for professionals with work experience." http://www.isb.edu/intermediatepages/apply.shtml (accessed August 3, 2011). Among the materials submitted in response to the AAO's NDI/RFE are additional excerpts from the ISB's website (Exhibit 3 of the response) that describe the PGP more fully as "an incisive one-year programme ... designed to get [students] back to the corporate world as soon as possible. It is ideal for working professionals who want to enhance their careers without a long hiatus from work." Most tellingly, the website trumpets the PGP with the following language: "One-year programmes have a great advantage over two-year programmes because of the tremendous savings in opportunity costs." Thus, the ISB draws important distinctions between its post-graduate management program and a two-year M.B.A. program. It stresses the advantage of its program to individuals who already have some experience and want a concentrated dose of further education with the minimum interruption to their careers. Thus, the ISB itself does not advertise its PGP as equivalent to a master's degree program in business administration, or a related field.

On appeal counsel emphasizes the fact that the beneficiary's certificate from the [redacted] School of Business was signed not only by the ISB's dean, but also by the deans of the Kellogg School of Management at Northwestern University and the Wharton School at the University of Pennsylvania. Both of those business schools have working relationships with the ISB pursuant to a jointly signed Memorandum of Understanding.

According to counsel, in its response to the AAO's NDI/RFE on July 7, 2011, the dean of the Kellogg School "certified" in a letter dated July 9, 2004, that "Kellogg recognizes the ISB PGP as the equivalent of an MBA from a U.S. university (emphasis added)." A close reading of the 2004 letter, however, does not corroborate counsel's claim. What the dean of the Kellogg School, [redacted] stated in his 2004 letter is that Kellogg "recognizes the ISB PGP as an equivalent of an MBA program run in the United States (emphasis added)." The letter from Mr [redacted] does not state that the ISB's post-graduate program in management produces the U.S. equivalent of a master's degree in business administration (MBA), as claimed by counsel. The letter is not that precise. While stating that there is an equivalency between the ISB's post-graduate program and an MBA program in the United States, it does not state that the academic credential earned at the conclusion of the shorter ISB program is equivalent to the academic credential earned at the conclusion of the two-year program at Kellogg. In the final analysis, what can be gleaned from Mr. [redacted] etter is that the course content of the ISB's post-graduate program is similar to that of the Kellogg program, but it does not necessarily add up to a full MBA equivalent degree.

Counsel also references another letter submitted with its response to the NDI/RFE, dated June 1, 2011, from the dean of the Indian School of Business, [redacted] discussing the Wharton School's close affiliation with the ISB. In language mirroring the 2004 letter from the dean of the Kellogg School, Mr. [redacted] claims that "The Wharton School recognizes the ISB PGP as the equivalent of an MBA program run in the United States." In addition to the equivalency issue

discussed above with respect to the Kellogg School, the letter from Mr[redacted]poses evidentiary problems because it was not written by, or endorsed in any recognizable manner, by an official of the Wharton School. Accordingly, the letter from the dean of the ISB has little or no probative value in this proceeding. Moreover, doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

Based on the foregoing analysis, the AAO determines that the petitioner has failed to establish that the certificate awarded to the beneficiary by the Indian School of Business upon completion of the ISB's post-graduate program in management is equivalent to a master's degree in business administration, or a related field such as marketing or finance, from a U.S. university. The AAO also notes, in this regard, that the ISB is not a degree-granting college or university. Since the beneficiary does not have a foreign equivalent degree to an advanced degree from a U.S. university, he does not qualify for preference visa classification based on such a degree under section 203(b)(2) of the Act.

Qualifications for the Job Offered

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (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 [visa category] status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

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

> The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] 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 INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F. 2d at 1309.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* 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. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *Id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In this case, Part H, line 4 of the labor certification specifies that a master's degree is the minimum level of education required for the job. Line 4-B specifies "business administration" as the major field of study. Line 6 specifies that 36 months (three years) of "experience in the job offered" is required. Lines 7 and 7-A specify that an alternative field of study – marketing, finance, or a related field – is acceptable for the job. Line 8 specifies that no alternative combination of education or experience is acceptable. Line 9 specifies that a foreign educational equivalent is acceptable for the job. Line 10 specifies that 36 months (three years) experience in an alternate occupation is acceptable, and line 10-B specifies that alternate occupation as a "related position."

The beneficiary does not meet all of the above requirements. In particular, he does not have a U.S. master's degree or a foreign equivalent degree in business administration, marketing or finance. Therefore, he does not fulfill the requirements of Part H, lines 4, 4-B, 7, or 9.

Conclusion

The beneficiary does not have a United States advanced degree or a foreign equivalent degree, and thus does not qualify for preference visa classification under section 203(b)(2) of the Act. Nor does the beneficiary meet the job requirements on the labor certification. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

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

ORDER: The appeal is dismissed.