



U.S. Citizenship  
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Services

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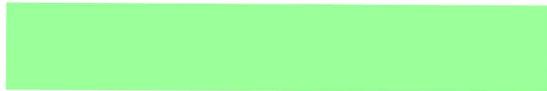


DATE: **SEP 04 2014**

OFFICE: TEXAS SERVICE CENTER

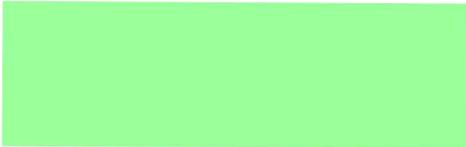
FILE: 

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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a software development and consulting business. It seeks to permanently employ the beneficiary in the United States as a “Network and System Administrator.” 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).

At issue in this case is whether the beneficiary possesses an advanced degree as required by the terms of the labor certification and the requested preference classification.

### I. PROCEDURAL HISTORY

As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).<sup>1</sup> The priority date of the petition is November 16, 2012.<sup>2</sup>

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Master’s degree in Computer Science or equivalent.
- H.5. Training: None required.
- H.6. Experience in the job offered: 12 months.
- H.7. Alternate field of study: Engineering, Electronics or related field.
- H.8. Alternate combination of education and experience: Bachelor’s degree.
- H.8-C. If applicable, indicated the number of years experience acceptable in question 8: 6.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Is experience in an alternate occupation acceptable? Yes.
- H.10-A. If Yes, number of months experience in alternate occupation required: 12.
- H.14. Specific skills or other requirements: MASTER’S DEGREE OR EQUIVALENT\* AND ONE YEAR EXPERIENCE IN REQUIRED JOB & TECHNOLOGY. (\*Bachelor’s degree and five years experience will be considered equivalent to Master’s degree). Travel required.

Part J of the labor certification states that the beneficiary possesses a Bachelor’s degree in Computer Science from the [REDACTED] India, completed in 1997. The record contains a copy of the beneficiary’s Bachelor of Science degree in Computer Science and transcripts from the [REDACTED] India, issued in 1997.

<sup>1</sup> See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

<sup>2</sup> The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

The record also contains evaluations of the beneficiary's educational credentials prepared by the following individuals:

- By [REDACTED] Ph.D. for [REDACTED] dated August 17, 2013.
- By [REDACTED] dated August 12, 2013.
- By [REDACTED] Professor of Physics at the [REDACTED] (currently the [REDACTED]), dated July 10, 2007.

Part K of the labor certification states that the beneficiary possesses the following employment experience:

- As a systems analyst for the petitioner beginning February 1, 2006
- As a production support engineer with [REDACTED] Maryland from June 13, 2002 until January 31, 2006.
- In Engineer Technology with [REDACTED] India from October 21, 1999 until January 31, 2002.

The record contains a letter from the petitioner, dated January 10, 2011, stating that the beneficiary was employed as a systems analyst from February 1, 2006 until December 31, 2010. The record contains an experience letter from [REDACTED] on company letterhead stating that the company employed the beneficiary as a Senior Production Support Engineer from June 13, 2002 until January 31, 2006. The record also contains an experience letter from [REDACTED] on company letterhead stating that the company employed the beneficiary in Engineer Technology from October 21, 1999 until January 31, 2002.

The director's decision denying the petition concludes that the beneficiary does not possess a U.S. Master's degree or a U.S. bachelor's degree, or the foreign equivalent for either degree, and therefore does not meet the educational requirements to qualify as an advanced degree professional.

On appeal, the petitioner cites the evaluations in the record and asserts that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree based on the courses taken and the equivalent number of credit hours taken.

The petitioner's appeal is properly filed and makes a specific allegation of error in law or fact. The AAO conducts appellate review on a *de novo* basis.<sup>3</sup> We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>4</sup> We may deny a petition that fails

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<sup>3</sup> See 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g., *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

<sup>4</sup> The submission of additional evidence on appeal is allowed by the instructions to Form I-290B,

to comply with the technical requirements of the law even if the director does not identify all of the grounds for denial in the initial decision.<sup>5</sup>

## II. LAW AND ANALYSIS

### **The Roles of the DOL and USCIS in the Immigrant Visa Process**

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

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 above inquiries assigned to the DOL, or the 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).<sup>6</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

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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).

<sup>5</sup> *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).

<sup>6</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A).

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:

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

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

The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b),

8 U.S.C. § 1154(b). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

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

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

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and the beneficiary are eligible for the requested employment-based immigrant visa classification.

### **Eligibility for the Classification Sought**

Section 203(b)(2) of the Act, 8 U.S.C. § 1153(b)(2), provides immigrant classification to members of the professions holding advanced degrees. See also 8 C.F.R. § 204.5(k)(1).

The regulation at 8 C.F.R. § 204.5(k)(2) defines the terms "advanced degree" and "profession." An "advanced degree" is defined 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.

A "profession" is defined as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." The occupations listed at section 101(a)(32) of the Act are "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of

letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an “advanced degree” is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

When the beneficiary relies on a bachelor’s degree (and five years of progressive experience) for qualification as an advanced degree professional, the degree must be a single U.S. bachelor’s (or foreign equivalent) degree. 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).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the legacy INS 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).

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold at least a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. 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.”<sup>7</sup> 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” of a United States baccalaureate degree. *See* 8 C.F.R. § 204.5(k)(2).

The beneficiary’s degree must also be from a college or university. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an “official academic record showing that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree.” 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.” We cannot conclude that the evidence required to demonstrate that a beneficiary is an advanced degree professional is any less than the evidence required to show that the beneficiary 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. *See Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3<sup>rd</sup> Cir. 1995) *per APWU v. Potter*, 343 F.3d 619, 626 (2<sup>nd</sup> 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, 30706 (July 5, 1991).<sup>8</sup>

In addition, a three-year bachelor’s degree will generally not be considered to be the “foreign equivalent” of a United States baccalaureate degree. *See Matter of Shah*, 17 I&N Dec. 244 (Reg’l. Comm’r. 1977).<sup>9</sup> *See Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor’s degree or foreign equivalent degree); *see also Sunshine Rehab Services, Inc. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010) (the beneficiary’s three-year bachelor’s degree was not the foreign equivalent of a U.S. bachelor’s degree).

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<sup>7</sup> Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of H-1B 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.

<sup>8</sup> Compare 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”).

<sup>9</sup> In *Matter of Shah* the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

In the instant case, the petitioner relies on the beneficiary's three-year Bachelor of Science degree in Computer Science from the [REDACTED] India, as being equivalent to a U.S. bachelor's degree. As noted above, the record contains evaluations of the beneficiary's educational credentials prepared by the following individuals:<sup>10</sup>

- By [REDACTED] Ph.D., for [REDACTED] dated August 17, 2013.
- By [REDACTED] [REDACTED] dated August 12, 2013.
- By [REDACTED] Professor of Physics at the [REDACTED] (currently the [REDACTED] dated July 10, 2007.

Dr. [REDACTED] states in his evaluation that the beneficiary's Bachelor's degree in Computer Science from the [REDACTED], India is equivalent to a "Bachelor of Science with a major in Computer Science, representing 183 semester credit hours, from an institution of postsecondary education in the United States of America." The evaluation also states the following on page three:

. . . Evidence indicates that in the overwhelming majority of cases, the number of contact hours in an Indian 3 yr bachelor's degree exceeds 1800. This is supported further by references below in which it is shown that collegiate instruction in India is markedly more intensive than comparable instruction in the U.S. On this basis, we can confidently say that an Indian three year bachelor's degree likely contains in excess of 1800 contact hours, just as we can say of a generic U.S. bachelor's degree that it likely contains the same. Our decision is therefore to adopt the figure of 1800 as representing a sensible minimum of contact hours absent evidence to the contrary.

This evaluation appears to conclude that the majority of three-year Indian degrees exceed 1800 contact hours and therefore are the equivalent of a bachelor's degree from an accredited U.S. university. Dr. [REDACTED] goes on at length about Carnegie Units and Indian degrees in general in his evaluation, concluding that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate but makes no attempt to assign credits for individual courses.

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<sup>10</sup> 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 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

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.<sup>11</sup> 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.<sup>12</sup> 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. The Carnegie Unit does not apply to higher education.<sup>13</sup>

Dr. [REDACTED] also cites a document entitled "Recommendation on the Recognition of Studies and Qualifications," which was adopted in the General Conference of the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1993. Paragraph 1(e) of this report relating to "recognition" of qualifications awarded in higher education states the following:

"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.

Dr. [REDACTED] further cites the following provision:

9. Member States should take all feasible steps within the framework of their national systems and in conformity with their constitutional, legal and regulatory provisions to encourage the competent authorities concerned to give recognition, as defined in paragraph 1(e), to qualification in higher education that are awarded in the other Member States, with a view to enabling their holders to pursue further studies, training or training for research in their institutions of higher education, subject to all academic admission requirements obtaining for nationals of that State.

Upon further review of UNESCO and the documents in the record, we conclude that 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 inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the

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<sup>11</sup> The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose motivation is "*improving teaching and learning.*" See <http://www.carnegiefoundation.org/about-us/about-carnegie> (accessed August 20, 2014).

<sup>12</sup> See <http://www.carnegiefoundation.org/faqs> (accessed August 20, 2014).

<sup>13</sup> See <http://www.old.suny.edu/facultysenate/TheCarnegieUnit.pdf> (accessed August, 2014).

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) (accessed on August 12, 2014 at <http://unesdoc.unesco.org/images/0013/001388/138853E.pdf> and incorporated into the record of proceedings), provides:

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. UGC, AICTE and AIU are developing criteria and mechanisms regarding the same.

*Id.* at 84. (Emphasis added.)

Ms. [REDACTED] concludes in her evaluation that the beneficiary’s bachelor’s degree is equivalent to a “Bachelor of Science Degree in Computer Science.” She lists the credit numbers of each course the beneficiary took and states, “Total US Credit Equivalency per contact hours using the Carnegie Unit: 183.” It is unclear how Ms. [REDACTED] determined the number of credit hours for the beneficiary’s courses where the record does not contain evidence of the number of contact hours for each course.

Professor [REDACTED] concludes in his evaluation that the beneficiary’s bachelor’s degree “represents a single-source degree which is the equivalent of a bachelor’s degree in the United States system.” He states that all three-year Indian degrees contain, at a minimum, 180 contact hours, which he states “translates into 120 semester credit hours in the United States system.” However, the beneficiary’s transcripts do not state how many contact hours he took.

We have reviewed 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 around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. 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.” See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>14</sup>

According to EDGE, the beneficiary’s three-year Bachelor of Science degree is comparable to three years of university study in the United States.<sup>15</sup> Accordingly, for the reasons stated above, the evaluations by Dr. [REDACTED] Ms. [REDACTED] and Professor [REDACTED] as well as these statements by UNESCO, have not established that the beneficiary’s degree is the foreign equivalent to a U.S. bachelor’s degree. Therefore, based on the conclusions of EDGE, the evidence in the record on appeal is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor’s degree.

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary possessed at least a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, or a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty. Therefore, the beneficiary does not qualify for classification as an advanced degree professional under section 203(b)(2) of the Act.

### **The Minimum Requirements of the Offered Position**

The petitioner must also establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by 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 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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<sup>14</sup> In *Confluence International, 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 beneficiary’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. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), 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 required a degree and did not allow for the combination of education and experience.

<sup>15</sup> See <http://edge.aacrao.org/country/credential/bachelor-of-arts-ba-bachelor-of-commerce-bcom-bachelor-of-science-bsc?cid=single> (accessed April 30, 2014).

In evaluating 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 *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise clearly prescribed, e.g., by regulation, USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate about the beneficiary’s qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to “examine the certified job offer *exactly* as it is completed by the prospective employer.” *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve “reading and applying *the plain language* of the [labor certification].” *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification. Even though the labor certification may be prepared with the beneficiary in mind, USCIS has an independent role in determining whether the beneficiary meets the labor certification requirements. See *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 \*7 (D. Or. Nov. 30, 2006).

In the instant case, the labor certification states that the offered position requires either: (1) a Master’s degree in Computer Science or its foreign equivalent and 12 months of experience in the job offered; or (2) a Bachelor’s degree or its foreign equivalent and six years of experience in the job offered.

For the reasons explained above, the petitioner has failed to establish that the beneficiary possesses the equivalent of a U.S. bachelor’s degree.

In addition, the labor certification also requires the beneficiary to have six years of experience in the job offered, as a “Network and System Administrator.” In Dr. [REDACTED] evaluation, he relies on the beneficiary’s experience as a “Senior Production Support Engineer” with [REDACTED] from June 2002 to January 2006, and as an “Engineer - Technology” for [REDACTED] from October 1999 to January 2002. However, this experience constitutes a period of 5 years, 10 months, and 28 days. The labor certification requires 12 months of experience in the job offered, in addition to five years of experience, coupled with a bachelor’s degree to establish an equivalency to a master’s degree. Therefore, the beneficiary’s experience is approximately one month less than the required experience.

As noted above, the record contains a letter from the petitioner, dated January 10, 2011, stating that the beneficiary was employed as a systems analyst from February 1, 2006 until December 31, 2010. In our Notice of Intent to Dismiss (NOID) and Request for Evidence, dated June 3, 2014, we requested that the petitioner provide additional evidence to establish that the beneficiary had the required experience for the position offered. We stated in our NOID that the beneficiary’s experience

with the petitioner cannot be used to qualify the beneficiary for the certified position unless it was in a position that is not substantially comparable to the position offered.

The regulation at 20 C.F.R. § 656.17 states:

(i)(3) If the alien beneficiary already is employed by the employer, in considering whether the job requirements represent the employer's actual minimums, DOL will review the training and experience possessed by the alien beneficiary at the time of hiring by the employer, including as a contract employee. The employer can not require domestic worker applicants to possess training and/or experience beyond what the alien possessed at the time of hire unless:

- (i) The alien gained the experience while working for the employer, including as a contract employee, in a position not substantially comparable to the position for which certification is being sought, or
- (ii) The employer can demonstrate that it is no longer feasible to train a worker to qualify for the position

A definition of "substantially comparable" is found at 20 C.F.R. § 656.17:

5) For purposes of this paragraph (i):

- ...
- (ii) A "substantially comparable" job or position means a job or position requiring performance of the same job duties more than 50 percent of the time. This requirement can be documented by furnishing position descriptions, the percentage of time spent on the various duties, organization charts, and payroll records.

In our NOID, we addressed the similarities between the duties of Systems Analyst and as Network and Systems Administrator, the position offered. The job details stated for the beneficiary's employment with the petitioner as a "Systems Analyst" include the following:

Install, configure and support Local Area Network (LAN), Wide Area Network (WAN) and Internet system. Coordinate changes to computer database management systems. Plan, coordinate, design and maintain databases using HP UNIX/Sun Solaris/AIX, Linux or Windows Server, WEB/Mail Server, DNS, NFS, FTP, Backup Server and correct programs. Modify database programs to increase processing performance/performance tuning. Review and correct programs.

Part H.11 of the labor certification states that the instant position of "Network and Systems Administrator" has the following job duties:

Design and develop computer Network systems. Analyze system requirements to determine feasibility of design within time and cost constraints. Install, configure and support Local Area Network (LAN), Wide Area Network (WAN) and complex Internet system for multi users. Plan, coordinate, design and maintain databases using Unix/Solaris/AIX/Linux or Windows Server, DNS, NFS, FTP, Backup Server; Review and correct programs.

We indicated in our NOID that the job duties of these positions appear to be very similar, and we requested that the petitioner demonstrate that the beneficiary's position as "Systems Analyst" was not substantially comparable to the instant position offered as "Network and Systems Administrator."

In response to our NOID, the petitioner submitted two statements on company letterhead that list the percentage of duties of each position. The following table reflects the percentage of time the beneficiary spent in duties as a Systems Analyst and the percentage of time that he will be engaged in the duties of Network and Systems Administrator:

<b>Systems Analyst</b>	<b>Percentage of time</b>	<b>Network &amp; Systems Administrator</b>	<b>Percentage of time</b>
<b>Installation and Configuration</b>	<b>15%</b>	<b>Installation and Configuration</b>	<b>15%</b>
Replication and Geographic Failover	10%		
<b>Maintenance</b>	<b>25%</b>	<b>Maintenance</b>	<b>10%</b>
<b>Monitoring</b>	<b>15%</b>	<b>Monitoring</b>	<b>15%</b>
<b>Backups and Disaster Recovery</b>	<b>10%</b>	<b>Backups and Disaster Recovery</b>	<b>10%</b>
Troubleshooting	15%		
<b>Upgrades</b>	<b>10%</b>	<b>Upgrades</b>	<b>5%</b>
		System Study	20%
		Security	20%
		Miscellaneous	5%
<b>Total percentage of time spent performing the same duties</b>	<b>75%</b>		<b>55%</b>

The above table demonstrates that as a Systems Analyst, the beneficiary performed the same job duties as a Network & Systems Administrator 75 percent of the time. This demonstrates that the experience gained with the petitioner was in a position that is substantially comparable to the position offered as he was performing the same job duties more than 50 percent of the time. Therefore, the beneficiary's prior employment with the petitioner as a Systems Analyst constitutes a "substantially comparable position" to the job offered and, according to DOL regulations, the petitioner cannot rely on this experience for the beneficiary to qualify for the proffered position.

In addition, the record contains an experience letter from [REDACTED] on company letterhead stating that the company employed the beneficiary as a Senior Production Support Engineer from June 13, 2002 until January 31, 2006. The record also contains an experience letter from [REDACTED] on company letterhead stating that the company employed the beneficiary in Engineer Technology from October 21, 1999 until January 31, 2002. However, these experience letters do not demonstrate how the beneficiary's positions as a Senior Production Support Engineer or his employment in Engineer Technology constitute qualifying experience as a Network and System Administrator. The petitioner must resolve these discrepancies in any further filings.

Therefore, the submitted experience letters do not establish that the beneficiary possessed the required experience for the offered position.

The petitioner failed to establish that the beneficiary possessed the minimum requirements of the offered position set forth on the labor certification by the priority date. Accordingly, the petition must also be denied for this reason.

### III. CONCLUSION

In summary, the petitioner failed to establish that the beneficiary possessed an advanced degree as required by the terms of the labor certification and the requested preference classification. Therefore, the beneficiary does not qualify for classification as a member of the professions holding an advanced degree under section 203(b)(2) of the Act. The director's decision denying the petition is affirmed.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

**ORDER:** The appeal is dismissed.