

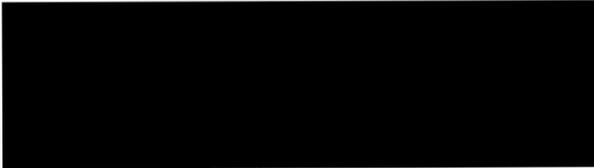
identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B26



FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: DEC 05 2007  
WAC 06 029 50583

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

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

A handwritten signature in black ink, appearing to read "R. Wiemann".

Robert P. Wiemann, 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 sustained. The petition will be approved.

The petitioner imports and sells goods and merchandise. It seeks to employ the beneficiary permanently in the United States as an import coordinator. As required by statute, a Form ETA 750,<sup>1</sup> Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education and experience as stated on the labor certification. Specifically, the director determined that the beneficiary did not possess an associate's degree and two years of experience in the job offered or two years of experience in the related occupation of import/export coordinator.

On appeal, the petitioner, through counsel, submits a credentials evaluation and asserts that the petitioner has established that the beneficiary possesses the requisite education and experience as set forth on the labor certification.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(l)(3) further provides:

(ii) *Other documentation—*

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date. The filing date or priority date of the petition is the initial receipt in the DOL's employment service system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on September 30, 2002.

---

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

The DOL assigned the occupational code of 13-1022, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/link/summary/13-1022> (accessed 11/13/07) and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Three requiring "medium preparation" for the occupation type closest to the proffered position. According to DOL, previous work-related skill, knowledge, or experience is needed for such an occupation. Employees in these occupations usually need one or two years of training involving both on-the-job experience and informal training with experienced workers. DOL assigns a standard vocational preparation (SVP) range of 6-7 to the occupation, which means "[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Some may require a bachelor's degree." <http://online.onetcenter.org/link/summary/13-1022> (accessed 11/13/07). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

Previous work-related skill, knowledge, or experience is required for these occupations. For example, an electrician must have completed three or four years of apprenticeship or several years of vocational training, and often must have passed a licensing exam, in order to perform the job.

*See id.*

Thus the proffered position will be analyzed as a skilled worker since the normal occupational requirements do not require a bachelor's degree but a minimum of one to two years of training or experience. Therefore, CIS will examine the petition under the skilled worker category, which requires a showing that the alien has two years of training or experience and meets the specific education, training, and experience terms of the job offer on the alien labor certification application.

The issue before us is whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification. The regulations specifically require the submission of such evidence for this classification. 8 C.F.R. § 204.5(l)(3)(B) ("the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification"). As noted above, the ETA 750 in this matter is certified by DOL.

The beneficiary possesses a Bachelor of Science in Chemistry from Adamson University in Manila, Philippines which was conferred in April 1982 following her attendance from 1977 to 1982. Thus, the issue is whether this degree meets the requirements of an associate's degree in a general field of study as set forth on the labor certification. We must also consider whether the beneficiary satisfies the requirement of two years of work experience in the proffered job as an import coordinator or a related occupation specified as an import/export coordinator, as set forth on the labor certification.

#### **Authority to Evaluate Whether the Alien is Eligible for the Classification Sought**

As noted above, the ETA 750 in this matter is certified by DOL. Thus, at the outset, it is useful to discuss DOL's role in this process. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

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

According to 20 C.F.R. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

Under § 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

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

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts, including the 9<sup>th</sup> Circuit that covers the jurisdiction for this matter.

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). *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

\* \* \*

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

*Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

**Authority to Evaluate Whether the Alien is Qualified for the Job Offered**

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 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).

It is noted that a central issue in this case is whether a beneficiary who possesses a foreign bachelor's degree in chemistry from Adamson University in the Philippines has met the educational requirements of an associate's degree in a general area of study as described in Item 14 of the labor certification. This job

requirement must represent the employer's actual minimum requirements for the certified position. 20 C.F.R. § 656.17(i)(1).<sup>2</sup>

The key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education:	College 2	College Degree Required Associates Degree
		Major Field of Study General <sup>3</sup>
Experience:	Job Offered 2 yrs	Related Occupation (Specify) Or Import/Export Coordinator

Block 15 Other Special Requirements  
Must be Fluent in Mandarin Chinese<sup>4</sup>

In response to the director's inquiries through a request for evidence and a notice of her intent to deny the petition, the petitioner provided a copy of a May 7, 1996, letter from [REDACTED] in Manila, Philippines. He confirmed that the beneficiary was employed as an import/export manager from June 1987 to March 1990 and described the duties that she performed as including handling all aspects of the importing and exporting of metals and other materials including shipping, receiving, customs clearance, documentation and payment processing. Thus the evidence conforms

<sup>2</sup> We are cognizant of the recent decisions in *Grace Korean United Methodist Church v. Michael Chertoff*, CV 04-1849-PK (D. Ore. November 3, 2005), and *Snapnames.com, Inc. v. Michael Chertoff*, CV 06-65-MO (D. Ore. November 30, 2006). Those cases, however, focused on the proper interpretation of a 'B.A. or equivalent' and a 'B.S. or foreign equivalent' as set forth in the respective labor certifications and are not directly applicable in the instant matter. Moreover, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993).

<sup>3</sup> We interpret this to mean any major field of study.

<sup>4</sup> This requirement was satisfied through evidence submitted to the underlying record.

to the requirements of 8 C.F.R. § 204.5(l)(3)(A). We find that this two years and nine months of experience as an import/export manager satisfies the minimum two years of work experience required by the labor certification in a related occupation as an import/export coordinator.

The director's denial of September 18, 2006<sup>5</sup> also found that because the petitioner had failed to provide a credentials evaluation determining that the beneficiary's Bachelor's of Science in Chemistry met the minimum requirements of an associate's degree in general studies as required by the ETA 750A, the petition could not be approved. Counsel had responded to this request by stating that a credentials evaluation was not necessary as the California Service Center had issued a nonimmigrant H-1B visa three times between 1994 and 2000 (which requires a baccalaureate degree) to the beneficiary and that an evaluation had been provided with those applications. He attached a copy of a request for evidence that had been issued in one of those case, but did not provide a copy or a new evaluation. Counsel further asserted that the beneficiary's college degree accompanied by her grade transcript showing her attendance during the five years between 1977 and 1982 established that her educational credentials exceeded the minimum requirements set forth on the labor certification.

Counsel renews this assertion on appeal and also provides a credentials evaluation from the Academic Credentials Evaluation (ACEI), dated January 17, 2007. It determines that the beneficiary's Bachelor of Science in Chemistry represents the equivalent to a Bachelor of Science in Chemistry as awarded by a regionally accredited institution in the United States. It also states that her degree satisfies requirements "for the United States Associate of Science in Chemistry which constitutes between sixty to seventy semester units of undergraduate credit."

It is noted that the AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); see also, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See, e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

It is additionally noted that because the petitioner failed to respond specifically to the director's request for evidence in providing a credentials evaluation as it was asserted that the requested evidence was already included in previous nonimmigrant petitions, it is worth emphasizing that that each petition filing is a separate proceeding with a separate record. See 8 C.F.R. § 103.8(d). In making a determination of statutory eligibility, Citizenship and Immigration Services (CIS) is limited to the information contained in the record of proceeding. See 8 C.F.R. § 103.2(b)(16)(ii). If a director requests additional evidence that the petitioner may have submitted in conjunction with a separate nonimmigrant petition filing, the petitioner is, nevertheless, obligated to submit the requested evidence, as the record of the nonimmigrant proceeding is not combined with the record of the immigrant proceeding.

Finally, it is noted that CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Moreover, the failure to submit requested evidence that precludes a material line of inquiry

---

<sup>5</sup> The director's decision erroneously refers to the proffered position as that of a registered nurse.

shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14). As in the present matter, where a petitioner has been put on notice of a deficiency in the evidence and has been given an opportunity to respond to that deficiency, the AAO will not accept evidence offered for the first time on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988).

To determine whether a beneficiary is eligible for a preference immigrant visa, CIS must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, CIS must examine "the language of the labor certification job requirements" in order to determine what the petition beneficiary must demonstrate to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which CIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). CIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). CIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

That said, as a matter of *de novo* review, the AAO finds that this petition is eligible for approval. At the outset, it is generally noted that an associate degree in the United States is conferred after the completion of a course of study usually lasting two years. It may be awarded by community colleges, junior colleges, business colleges and some universities and colleges empowered to award baccalaureate degrees. It is the lowest in the hierarchy of postsecondary academic degrees.<sup>6</sup>

In identifying the U.S. academic equivalency represented by the beneficiary's Bachelor of Science in Chemistry from Adamson University in the Philippines, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, [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."

---

<sup>6</sup>See [http://en.wikipedia.org/wiki/Associate%27s\\_degree](http://en.wikipedia.org/wiki/Associate%27s_degree).

According to the registration page for EDGE, <http://accraoedge.accrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” EDGE indicates that a bachelor of science degree in the Philippines is “represents attainment of a level of education comparable to a bachelor’s degree in the United States.”

As noted above, the actual minimum requirements for the certified position must be set forth on the labor certification. The Board of Alien Labor Certification of Appeals (BALCA) cases cited on appeal by counsel such as *Matter of Trimarco Jr.*, 2003 INA 293 (BALCA 2004) and *Matter of New Way International, Inc.* 2004 INA 1, (BALCA 2004) discussed the unlawful rejection of U.S. worker applicants for unlawful job-unrelated reasons. In *Trimarco Jr.*, the certified job of assistant bookkeeper required a high school diploma and no training or experience. BALCA upheld the certifying officer’s denial of the certification based on the employer’s unlawful denial of one applicant because he was considered over-qualified as a computer engineer and the denial of another applicant over concerns about a long commute. In *Matter of New Way International, Inc.*, the minimum requirements of the certified job required four years of college and a Bachelor’s degree in marketing or economics. No experience or other qualifications were required. BALCA upheld the certifying officer’s denial of the labor certification based on the employer’s unlawful rejection of a U.S. applicant who had a bachelor’s and master’s degree in economics.

Although these cases represent the proposition that an employer cannot simply reject a U.S. worker that meets the minimum requirements specified on the Form ETA-750, DOL is not reaching a decision as to whether the alien is qualified for the job specified on the Form ETA 750. That is a determination reserved to CIS for the reasons discussed above. CIS’ review and evaluation of the criteria the petitioner must prove in order to establish that the petition is approvable, which includes a review of the whether or not the beneficiary is qualified for the proffered position is governed by 203(b)(3)(A)(i) of the Act and 8 C.F.R. § 204.5(l)(3). Additionally, while 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions or decisions of other agencies are not similarly binding. Thus, DOL’s certification of an application for labor certification does not bind us in determinations of whether the alien is qualified for the job specified. However, these cases provide some guidance pertinent to the facts in this case.

In this case, the instant **petition contains a position that qualifies as a third preference skilled worker classification.** The regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification “must be accompanied by evidence that the alien meets the educational, training or experience, and other requirements of the individual labor certification.” As noted previously, the certified Form ETA 750 requires two **years** of college studies, an Associate’s degree in a general field of study, and two years of experience in the job offered or in a related occupation. The regulation governing skilled workers only requires that the beneficiary meet the requirements of the labor certification in addition to showing at least two years of qualifying employment experience. The beneficiary completed a baccalaureate degree in the Philippines following her attendance from 1977 to 1982, which is determined to be the equivalent of a U.S. bachelor’s degree, thereby exceeding the minimum requirement of an Associate’s degree. The beneficiary also obtained two years and nine months of qualifying employment experience as of the priority date of September 30, 2002. Therefore, the AAO finds that the beneficiary meets the minimum educational and employment experience requirements specifically set forth on the certified labor certification in the instant case.

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 met that burden.

**ORDER:** The appeal is sustained. The petition is approved.