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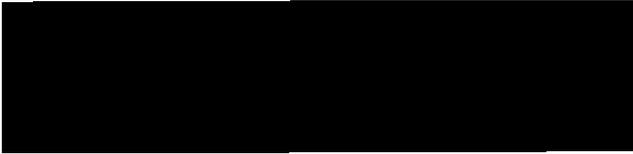
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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Services

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File: [REDACTED]
EAC-05-072-53147

Office: VERMONT SERVICE CENTER

Date: JAN 04 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a software consulting business, and seeks to employ the beneficiary permanently in the United States as a software engineer ("Software Quality Assurance Analyst"). As required by statute, the petition was filed with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director's February 28, 2005 denial, the petition was denied for failure to document that the beneficiary met the position requirements of the certified labor certification.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

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

The petitioner has filed to obtain permanent residence and classify the beneficiary as a professional or a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(2) provides that a third preference category professional is a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." The regulation at 8 C.F.R. § 204.5(l)(2), and 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. *See also* 8 C.F.R. § 204.5(l)(3)(ii).

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The priority date is the date that Form ETA 750 Application for Alien Employment Certification was accepted for processing by any office within the employment service system of the Department of Labor. *See* 8 CFR § 204.5(d).

In the case at hand, the petitioner filed Form ETA 750 with the relevant state workforce agency on February 24, 2003.² The proffered wage as stated on Form ETA 750 is \$65,000 per year, 40 hours per week. The labor

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

certification was approved on January 21, 2004, and the petitioner filed the I-140 on the beneficiary's behalf on December 29, 2004. On the I-140 petition, the petitioner listed the following information related to the petitioning entity: established 1996; gross annual income: \$25,000,000.00; net annual income: not listed; and employees: 350.

On December 2, 2005, the director issued a Request for Evidence ("RFE"). The RFE requested that petitioner submit additional evidence to demonstrate that the beneficiary possessed the required Bachelor's degree or its educational equivalent at the time of filing the Form ETA 750. The petitioner responded, but the director determined that the evidence submitted in response to the RFE was insufficient to overcome the deficiencies in the petition, and that the petitioner failed to demonstrate that the beneficiary had a bachelor's degree, and therefore, did not meet the requirements of the labor certification. The director concluded that the beneficiary had the equivalent of three years of education toward a bachelor of business administration degree, and therefore, did not establish that the beneficiary had a bachelor's degree or equivalent as required by the certified ETA 750. Further, the director determined that the petition could not be considered alternatively as a third preference skilled worker petition, as the labor certification required a Bachelor's degree, and the beneficiary did not have one. The petitioner appealed and the matter is now before the AAO.

In evaluating the beneficiary's qualifications, Citizenship and Immigration Services ("CIS") must look to the job offer portion of the alien 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, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

On the Form ETA 750A, the "job offer" position description provides:

² We note that the case involves the substitution of a beneficiary on the labor certification. Substitution of beneficiaries is permitted by the DOL. DOL had published an interim final rule, October 23, 1991, which limited the validity of an approved labor certification to the specific alien named on the labor certification application (*See* 56 FR 54925, 54930). The interim final rule eliminated the practice of substitution. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky v. Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating the portion of the interim final rule, which eliminated substitution of labor certification beneficiaries. The *Kooritzky* decision effectively led 20 CFR 656.30(c)(1) and (2) to read the same as the regulations had read before November 22, 1991, and allow the substitution of a beneficiary. Following the *Kooritzky* decision, DOL processed substitution requests pursuant to a May 4, 1995 DOL Field Memorandum, which reinstated procedures in existence prior to the implementation of the Immigration Act of 1990 (IMMACT 90). DOL delegated responsibility for substituting labor certification beneficiaries to the Service based on a Memorandum of Understanding. Procedures for the Service were then set forth in a memorandum from Louis Crocetti, INS Associate Commissioner, Substitution of Labor Certification Beneficiaries, File No. HQ 204.25P (March 7, 1996).

Customize testing strategies with methodologies for individual projects. Responsibilities include: software and hardware resources planning for the test environment. Design and develop test specifications, including test scripts and execute test plans and test cases. Conducting different types of tests: functionality testing, white box testing, unit testing, integration testing, system testing, regression testing, performance testing, stress testing. Identify problems in operating systems and database operations. Client/Server testing using Winrunner and web testing using SILK/Loadrunner. Report bugs and verify fixes.

Further, the job offered listed that the position required:

Education:	Bachelor's
Major Field Study:	Engineering , Computer Science, Computer Information Systems, Business, or equivalent.
Experience:	1 year in the job offered, Software Quality Assurance Analyst, or 1 year as a Quality Assurance Engineer/Consultant.
Other special requirements:	1. at least one year comprehensive experience in software application testing; and 2. some experience in software development and code implementation.

On the Form ETA 750B, signed by the beneficiary on October 14, 2004, the beneficiary listed prior education as: (1) Bombay University, Mumbai, India; Field of Study: Business, Finance and Commerce; from June 1983 to April 1986, for which he received a Bachelor of Commerce degree; and (2) Institute of Chartered Accountants of India; Field of Study: Accounting Finance and Commerce; from September 1986 to September 1989, for which he received a Chartered Accountancy degree.

The petitioner submitted an academic equivalency evaluation from the Trustforte Corporation.³ The Trustforte evaluation considered the beneficiary's studies, his Bachelor's of Commerce degree in Financial Accounting and Auditing, to be equivalent to three years of academic studies toward a Bachelor's of Business Administration degree, with a concentration in Accounting, in the U.S.

First, the regulations define a third preference category professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." See 8 C.F.R. § 204.5(1)(2). The regulation at 8 C.F.R. § 204.5(1)(3)(ii) specifies for the classification of a professional that:

(C) *Professionals*. If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member

³ We note that the Trustforte Corporation is not a member of the National Association of Credential Evaluation Services (NACES). The U.S. Department of Education refers individuals to NACES, private credential evaluation services, to determine the equivalence of foreign degrees to American degrees. The objective of NACES is to raise ethical standards in the types of credential evaluations provided by the private sector.

of the professions. Evidence of a baccalaureate degree shall be in the form an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). The director concluded that the beneficiary did not have the requisite U.S. baccalaureate degree or foreign equivalent degree based on the beneficiary's three-year degree from Bombay University

On appeal, counsel asserts that the beneficiary has the equivalent of a Bachelor's degree and references the evaluation from Trustforte.

First, in looking at the beneficiary's education, the beneficiary holds a Bachelor's of Commerce degree in Financial Accounting and Auditing from Bombay University, Mumbai, India, which he attended from June 1983 to April 1986. The Trustforte credentials evaluation states that this degree is the equivalent to three years undergraduate study at an accredited U.S. college or university. The evaluation does not conclude that the three-year foreign degree is equivalent to a U.S. Bachelor's degree. We agree that the beneficiary's foreign degree is not sufficient to satisfy the Bachelor's degree requirement as the foreign degree only encompasses three years of study.

The petitioner additionally submitted an evaluation of the beneficiary's training, education, and experience from a Professor of Computer Information Systems, Medgar Evers College of the City of New York. Based on the second evaluation, the evaluator concluded that the beneficiary had the equivalent of a Bachelor of Science degree in Management Information Systems. The evaluation considered the beneficiary's education, and "professional experience in the field of Management Information Systems" in the amount of six years and five months of "progressively responsible qualifying training and work experience in management information systems, systems analysis, and related areas." The evaluator describes the beneficiary's experience that he considered to render his evaluation:

[The beneficiary] commenced employment in the Computer Information Systems field in January 1998, as a QA Engineer for [REDACTED] in Singapore. [The beneficiary] was primarily involved in systems testing. He generated test plans and test cases, and he participated in user training for business customers. Through the course of his career in Computer Information Systems, [the beneficiary] has taken on positions of steadily increasing responsibility and complexity for a variety of technology firms, including Exim Bank (January 1998 through April 1998); CitiBank (April 1998 through March 1999); Tata Consultancy (April 1999 through March 2000); Telecommunication and Marketing Networks (September 2000 through November 2003); Ebay Incorporated (February 2003 through April 2003); [REDACTED] Incorporated (May 2003 through September 2003); and Infinite Computing Systems (January 2004 through September 2004). [The beneficiary] has consistently accepted greater leadership responsibilities in his career, advancing through the positions of QA Engineer, Senior QA Engineer, QA Lead, QA Supervisor, Business Analyst, and Senior Business Analyst.

Based on the work described above, the evaluator equated the six plus years of the beneficiary's work experience to two years of baccalaureate level education based on the formula that three years of work experience is equivalent to one year of education. The evaluator then determined that the beneficiary's two years of equivalent education, combined with the three years of his education earned to attain his Bachelor's of Commerce degree would be the equivalent of a Bachelor's degree in "the multi-disciplinary field of management information systems."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii) uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes, and not combined with work experience.⁴

⁴ We are aware of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, CV 04-1849-PK (D. Ore. November 3, 2005), which finds that Citizenship and Immigration Services (CIS) "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." We note that the AAO is not bound to follow the published decision of a United States district court, which arises in a different jurisdiction. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from other Circuit Court decisions discussed below. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church* at *8 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since CIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a).

At least two circuits, including the Ninth Circuit overseeing the Oregon District Court, have held that CIS does have the authority and expertise to evaluate whether the alien is qualified for the job. Those Circuit decisions are binding on this office and will be followed in this matter.

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

The labor certification was not drafted to consider a Bachelor's degree or equivalent in "education, training, or experience." The ETA 750 did not define equivalency in this manner, and to argue that the ETA 750 should be read to include the equivalent in education and experience, or otherwise, would be unfair to U.S. workers without degrees, but with the equivalent in experience, that may not have responded to advertisements during the labor certification recruitment phase. Further, we note that the rule to equate three years of experience for one year of education applies to non-immigrant H-1B petitions, but not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner did not set forth any alternative requirements or definition of equivalent to include a combination of education and experience.

Further, concerning the second evaluation, which combines the beneficiary's education, and experience to determine that he has the equivalent of a Bachelor's degree, even if we were to accept the combination of experience and education, we note that the evidence related to the beneficiary's work experience conflicts substantially, as will be discussed below. Based on the conflicting evidence, the second evaluation and its conclusion that the beneficiary has the equivalent of a Bachelor's degree based on education and experience, is questionable. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), which states: "Doubt raised on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition."

On the Form ETA 750B, the beneficiary listed his relevant experience as: (1) [REDACTED] Bethlehem, Pennsylvania, October 2004 to present, Software Quality Assurance Analyst; (2) [REDACTED]

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, reached a similar decision in *Black Const. Corp. v. INS*, 746 F.2d 503, 504 (1984).

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). *See also Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C.Cir.1977), "there is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise . . . all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority."

While we do not lightly reject the reasoning of a District Court in *Grace Korean United Methodist Church*, the District Court's decision is not binding on the AAO. Further, the decision is directly counter to other Circuit Court decisions that are binding on us, and is inconsistent with the actual labor certification process before DOL. Thus, we will maintain our consistent policy in this area of interpreting "or equivalent" as meaning a foreign equivalent degree. We note that this interpretation is consistent with our own regulations, which define a degree as a degree or a foreign equivalent degree. 8 C.F.R. § 204.5(i)(2). Finally, we distinguish *Grace Korean* from the facts of this case since *Grace Korean* required a degree equivalent to a Bachelor's degree but the case at hand requires an equivalent field of study to those delineated on the Form ETA 750A, Item 14.

Inc., Cedar Rapids, Iowa, January 2004 to September 2004, Programmer Analyst; (3) [REDACTED] Santa Clara, California, October 2000 to November 2003, Programmer Analyst; (4) [REDACTED] Mumbai, India, from January 1998 to March 2000, Software Quality Assurance Engineer; (5) [REDACTED] Ltd., Mumbai, India, from October 1989 to December 1997, Director of Customer Services; and (6) [REDACTED] Associates; Bombay, India, September 1986 to September 1989.

On Form G-325 filed with the beneficiary's I-485 application, the beneficiary listed the same first four positions, and listed the same dates of the employment. The beneficiary did list that his job title with [REDACTED] Inc. was as a Programmer Analyst and not a Software Quality Assurance Analyst as listed on the ETA 750.

We note that a prior petitioner filed an I-140 petition on behalf of the beneficiary, which was later withdrawn. The prior filing lists the beneficiary's position with [REDACTED] as the President and Chief Executive Officer, not as a Programmer Analyst. Further, the supporting documentation filed provides that his position duties involved the "day-to-day management and operation of the company . . . executes policies . . . attends to all matters concerning the protection of all intellectual property rights of the company . . . handling all borrowing" and other managerial functions. The beneficiary's resume submitted with the filing, and numerous other corporate documents clearly identify the beneficiary as the company president and not as a programmer analyst. Further, the beneficiary's resume indicates that from April 1998 to March 2000, the beneficiary was employed with [REDACTED] Ltd., in India as the managing director. His position involved, according to his resume, mainly business functions. We note that this conflicts with his listed position at [REDACTED] Consultancy Services for the same time period, where he lists that he gained experience as a Software Quality Assurance Engineer. Further, the resume lists that from January 1995 to April 1996, he was employed with [REDACTED] International, and that he was employed with [REDACTED] Ltd., India from August 1989 to December 1994, which additionally conflicts with subsequent [REDACTED] filings.

In comparison, the G-325 filed on behalf of the beneficiary with his first I-485 Adjustment of Status application, lists his experience as follows: (1) [REDACTED] Inc., San Jose, California, President, CEO, from March 2000 to present (November 27, 2002); (2) [REDACTED] Ltd., Bombay, India, Managing Director, from April 1998 to March 2000; (3) [REDACTED] Bombay, India, Managing Partner, April 1996 to March 1998; (4) [REDACTED] International, Bombay, India, Director Engineering, January 1995 to April 1996; (5) [REDACTED] Ltd., Bombay, India, Customer Relations Manager, August 1989 to December 1994.

We note that between the two G-325 Forms filed, significant discrepancies exist in the companies that the beneficiary listed that he was employed with, as well as discrepancies in his dates employed, and position titles. The evaluation that considers the beneficiary's education and experience, takes into account the beneficiary's work experience from 1998 to 2004 in the positions of QA Engineer, Senior QA Engineer, QA Lead, QA Supervisor, Business Analyst, and Senior Business Analyst. Based on the G-325 submitted with the first filing on the beneficiary's behalf, his experience was substantially business oriented and he did not work in the progression of computer positions listed, but rather as a Managing Director, and President.

The conflict in experience raises concerns regarding the veracity of the beneficiary, and the education and equivalency evaluation. *See Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988), which states: "Doubt raised on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." Further, "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies will not suffice." *Matter of Ho*, 19 I&N Dec. at 591-592. *See also Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). CIS may, in its discretion, use

as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence.

Further, although not raised in the director's denial, the conflict in experience raises questions whether the beneficiary meets the experience portion of the ETA 750, in addition to not meeting the educational requirements. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

A beneficiary is required to document prior experience in accordance with 8 C.F.R. § 204.5(l)(3), which 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.

To document the beneficiary's experience, the petitioner submitted the following letters:

1. Letter from [REDACTED] Inc., dated November 12, 2004;
Position title: Programmer Analyst;
Dates of employment: January 2004 through September 2004;
Description of duties: "Carried out UPS-SCS project as a Senior Software QA Engineer and was involved in QA of the software applications like GBS TM (Transportation Management)/ OF (Operational Finance) and GBS CM (Customs Management)."
2. Letter from [REDACTED] Chief Financial Officer, Telecommunication and Marketing Networks, [REDACTED] Inc., dated November 23, 2003;
Position title: not listed;
Dates of employment: September 2000 to November 2003;
Description of duties: "This is to certify that Mr. [REDACTED] was managing IT projects for [REDACTED] from September 2000 till November 2003."
3. Letter from [REDACTED], Managing Director, [REDACTED] Ltd., dated April 18, 1998;
Position title: Director of Customer Service;
Dates of employment: October 1989 to December 1997;

Description of duties: "His responsibilities included going to the trading floors of Bombay stock exchange to execute the stock trading transaction on behalf of our customers, maintaining cordial relations with customers."

While the first letter would be relevant, the experience is not equivalent to one year, and further, was gained subsequent to the priority date. A petitioner must establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The second letter is now in question based on the conflict in the beneficiary's job duties and titles described in a prior filing. The experience obtained in the third position for [REDACTED] Ltd. is not relevant to the position. Therefore, the petitioner has failed to document that the beneficiary meets the experience requirements of the position. The letters also fail to confirm that the beneficiary had the required one-year comprehensive experience in software application. Thus, the letters are insufficient evidence of the beneficiary's qualifying employment experience as provided by 8 C.F.R. § 204.5(l)(3)(ii)(A).

Secondly, counsel contends that the petition should be treated alternatively as a petition for a skilled worker. 8 C.F.R. § 204.5(l)(2) 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. *See also* 8 C.F.R. § 204.5(l)(3)(ii)(b). While the beneficiary need not possess a degree to be classified as a skilled worker, the beneficiary must meet the requirements of the labor certification. 8 C.F.R. § 204.5(l)(3)(B).

In the case at hand, the beneficiary does not meet the requirements of the labor certification. First, the letters submitted fail to document that the beneficiary has the required one-year of comprehensive experience in software application, so the beneficiary would not qualify as a skilled worker. Second, even if the beneficiary did establish that he could meet the special requirements, the certified ETA 750 requires a bachelor's degree, which as established above, the beneficiary does not have.

As a result, the petitioner has not documented that the beneficiary had the education or experience to meet the ETA 750 job offer requirements, and qualify for the position offered.

Accordingly, the petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.