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**U.S. Citizenship
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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **JUL 17 2008**
SRC 06 208 51681

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:
[REDACTED]

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, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a data technology firm. It seeks to employ the beneficiary permanently in the United States as a database developer. A Form ETA 750, 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 stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a Bachelor's Degree or foreign equivalent degree in Comp. Sci., MIS, Math, Engineering or a related field.

On appeal, counsel submits additional evidence and contends that the beneficiary's educational credentials satisfied the terms of the labor certification and that the petition could be approved under a skilled worker category.

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).

For the reasons discussed below, we concur with the director's interpretation of the terms of the labor certification, but would also note that various decisions by federal circuit courts, which are binding on this office, have upheld our authority to evaluate whether the beneficiary is qualified for the job offered.

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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date, the day the Form ETA 750 was accepted for processing by any office within DOL's employment 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 April 30, 2002. The visa preference petition was filed on June 26, 2006.

The job qualifications requirements are 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:

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: Minimum education, training, and experience

Education: (enter number of years)

Grade School	X
High School	X
College	X
College Degree Required (specify)	Bachelor's *
Major Field of Study	Computer Sci, MIS, Math, Engineering or a related field

Experience:

Job Offered	3 (yrs), or
Related Occupation (Programmer, Software Developer, Consultant, Analyst, or Software Engineer)	3 (yrs)

Block 15 Other Special Requirements * or foreign equivalent degree

In determining whether a beneficiary is eligible for a preference immigrant visa, Citizenship and Immigration Services (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).

As stated on the labor certification, the proffered position requires an indeterminate amount of college culminating in a Bachelor's degree or a foreign equivalent degree in a major field of study of computer science, MIS, Math, Engineering or a related field. Because of the certified position's academic requirements set forth on the labor certification, the proffered position is most properly analyzed as a professional. DOL assigned the occupational code of 15-1061, database administrators, 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/crosswalk/> (accessed 07/14/08) 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 Four requiring "considerable preparation" for the occupation type closest to the proffered position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." See <http://online.onetcenter.org/link/summary/15-1061.00> (accessed 07/14/08). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

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

The above regulations use a singular description of a 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.

As noted above, the ETA 750 in this matter is certified by DOL. 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.

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). 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 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).

In this matter, in support of the beneficiary’s educational credentials, the petitioner submitted a copy of a Bachelor of Science degree awarded to the beneficiary from Andhra University, India on April 23, 1994. The diploma indicates that the beneficiary studied, in part, mathematics, physics and computer science. His corresponding grade transcripts reflect that his degree represented three years of academic study.

The petitioner further provided an Evaluation of Education, Training, and Experience, dated November 16, 2000, from [REDACTED] Ph.D of the Zicklin School of Business affiliated with Baruch College of The City University of New York. Dr. [REDACTED] determines that the beneficiary’s Bachelor of Science degree from Andhra **University represents the completion** “of at least three years of academic studies leading to a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States.” He then reviews the beneficiary’s subsequent employment and concludes that the combination of the beneficiary’s academic studies and employment represents the achievement of the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States.

The director denied the petition on September 22, 2006, based on her determination that the petitioner had failed to establish that the beneficiary’s three-year Indian degree satisfied the terms of the ETA 750. She noted that the ETA 750 does not indicate that the employer will accept a combination of education and experience that is equivalent to a Bachelor’s degree

On appeal, contending that the beneficiary’s credentials fulfilled the terms of the ETA 750, counsel asserts that the annotation to Part B of the ETA 750 referring to the beneficiary’s schools and colleges attended demonstrates that the employer would accept a combination of education and experience that is acceptable as an equivalence to a Bachelor’s degree. The annotation is reflected as follows:

*The degree has been evaluated to be the equivalent of a U.S. Bachelor’s degree in Computer Science, Evaluation is attached.

Counsel suggests that when Part A and Part B of the ETA 750 are read together combined with the educational evaluation incorporated by reference, then it is clear that the petitioner considered the beneficiary’s qualifications acceptable.

The AAO does not find this assertion persuasive. Part A of the ETA 750 is signed by the employer under penalty of perjury that the information reflected therein is accurate. Items 14 and 15 of Part A of the ETA 750 is the specified area in which the employer must identify the minimum education, training, and experience of the certified position. Part B, signed by the beneficiary, represents an attestation of his education and employment experience. His affirmation of what his education signifies does not outweigh the specific requirements of the certified position as set forth on Items 14 and 15 of Part A of the ETA 750. In this case, although the duration of grade school, high school and college was completed only by an "X" and not number of years as instructed, the other terms are clear in requiring a Bachelor's degree or foreign equivalent degree in the specified fields of study. The annotation in item 15 of "or foreign equivalent degree" merely restates the exact language found in the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) for the professional visa category. If the employer's intention was anything else, it should have been explicitly set forth on Part A.

As advised in the request for evidence issued by this office to the petitioner, it was noted that in reviewing whether the beneficiary's Indian Bachelor of Science degree could represent a foreign equivalent degree, we had 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, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://aacraoedge.aacrao.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 India is "awarded upon completion of two to three years of tertiary study beyond Higher Secondary Certificate (or equivalent)." In the "credential advice" reference, it is noted that the bachelor of science degree represents a comparable level of education of two to three years of university study in the United States and that credit may be awarded on a course by course basis.

This office elects to rely on the EDGE advisory of the equivalency of the beneficiary's Bachelor of Science degree. There is no suggestion in EDGE that it may be considered as a foreign degree equivalent to a U.S. baccalaureate degree. It may not be concluded that the evaluation provided by the petitioner is probative of whether the beneficiary's credentials represent a foreign equivalent degree to a U.S. bachelor's degree because although the evaluation acknowledged that the beneficiary's degree represented the equivalent of at least three years of U.S. undergraduate studies, it could not conclude that this degree alone represented a foreign equivalent degree without combining the beneficiary's subsequent employment. 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. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

As noted by the director there is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section

203(b)(3) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor's degree. As to the employer's intent relevant to the specified requirements for the certified position, the petitioner's documents provided in response to the request of evidence are useful in determining whether the employer has provided notice to U.S. workers in its recruitment efforts that the degree requirements of this position might be met through a combination of lesser degrees or certificates.

In this regard, it is noted that the petitioner submitted an affidavit from [REDACTED] who identifies herself as a team leader in recruiting for the petitioner. She states that it has been difficult to find qualified candidates for various technical jobs such as database administrator, database developer, decision support analyst, software developer, solutions developer and systems engineer. Ms. [REDACTED] states that generally the petitioner would accept a Bachelor degree equivalent for such jobs even though the language may not be included on a job announcement. She adds that such an equivalence may be demonstrated by a foreign bachelor degree, by a combination of education and experience or by progressively responsible experience in the field.

It is noted however, that this generalized view of the employer's intent of the minimum acceptable requirements for the certified position of database developer as set forth in this case is not supported by the employer's statement to the state foreign labor certification unit as reflected in its April 12, 2002, letter regarding a request for reduction in recruitment for the certified position. In that letter, the employer claimed that the minimum requirements for the offered position required were a Bachelor's degree in a relevant field such as Computer Science, MIS, Mathematics, Engineering or a related field and three years of experience in the offered job or as a programmer, software developer, consultant, analyst, or software engineer. "An individual with less education and experience, in our opinion, would not be able to undertake the job duties successfully." The letter continues to describe the advantages that receiving a bachelor's degree affords to an individual and states that "holding a Bachelor's degree is a minimum requirement for this position." No lesser equivalency is mentioned. Similarly, the position's description contained in the copy of the internal job posting does not refer to any equivalency. A copy of a newspaper advertisement in the Arkansas Democrat Gazette, dated 5/12/2001, representing the offered position as well as other technical jobs merely stipulates "Bachelor's and/or Master's degrees required along with related experience."

Even if this petition is analyzed in the skilled worker category as defined in section 203(b)(3)(A)(i) of the Act,¹ the petitioner's intent as to the acceptable alternative requirements as used in its recruitment efforts remains relevant.

¹The regulation at 8 C.F.R. § 204.5(1)(3) further provides:

(ii) *Other documentation*—

(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.

We are cognizant 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.” 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). 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 the Circuit Court decisions cited above. 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 and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a). In reaching this decision, the court also concluded that the employer in that case tailored the job requirements to the employee and that DOL would have considered the beneficiary’s credentials in evaluating the job requirements listed on the labor certification.²

² Specifically, as quoted above, the regulation at 20 C.F.R. § 656.21(b)(6) requires the employer to “clearly document . . . that all U.S. workers who applied for the position were rejected for lawful job related reasons.” BALCA has held that an employer cannot simply reject a U.S. worker that meets the minimum requirements specified on the Form ETA-750. *See American Café*, 1990 INA 26 (BALCA 1991), *Fritz Garage*, 1988 INA 98 (BALCA 1988), and *Vanguard Jewelry Corp.* 1988 INA 273 (BALCA 1988). Thus, the court’s suggestion in *Grace Korean* that the employer tailored the job requirements to the alien instead of the job offered actually implies that the recruitment was unlawful. If, in fact, DOL is looking at whether the job requirements are unduly restrictive and whether U.S. applicants met the job requirements on the Form ETA 750, instead of whether the alien meets them, it becomes immediately relevant whether DOL considers “B.A. or equivalent” to require a U.S. bachelor degree or a foreign degree that is equivalent to a U.S. bachelor’s degree. We are satisfied that DOL’s interpretation matches our own. In reaching this conclusion, we rely on the reasoning articulated in *Hong Video Technology*, 1998 INA 202 (BALCA 2001). That case involved a labor certification that required a “B.S. or equivalent.” The Certifying Officer questioned this requirement as the correct minimum for the job as the alien did not possess a Bachelor of Science degree. In rebuttal, the employer’s attorney asserted that the beneficiary had the equivalent of a Bachelor of Science degree as demonstrated through a combination of work experience and formal education. The Certifying Officer concluded that “a combination of education and experience to meet educational requirements is unacceptable as it is unfavorable to U.S. workers.” BALCA concluded:

We have held in *Francis Kellogg, et als.*, 94-INA-465, 94 INA-544, 95-INA-68 (Feb. 2, 1998 (en banc) that where, as here, the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chose to list alternative job requirements, the employer’s alternative requirements are unlawfully tailored to the alien’s qualifications, in violation of [20 C.F.R.] § 656.21(b)(5), unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable. Therefore, the employer’s alternative requirements are unlawfully tailored to the alien’s qualifications, in violation of [20 C.F.R.] § 65[6].21(b)(5).

Additionally, we also note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, CV 06-65-MO (D. Ore. November 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The district court determined that ‘B.S. or foreign equivalent’ relates solely to the alien’s educational background, precluding consideration of the alien’s combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word ‘equivalent’ in the employer’s educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer’s intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that CIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner’s statement on Item 15 of Part A of the ETA 750 refers to a foreign equivalent degree, and not to other combinations of lesser degrees or merely a foreign equivalent. Additionally, the credential evaluation submitted herein, which offered an evaluation based on a combination of the beneficiary’s work experience and education would not be considered in this context.

It is noted that that as referenced in *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984), CIS is obliged to “examine the certified job offer *exactly* as it is completed by the prospective employer.” (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).

The beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree,” and, thus, does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional or as a skilled worker under 203(b)(3)(i) of the Act.

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

ORDER: The appeal is dismissed.

In as much as Employer’s stated minimum requirement was a “B.S. or equivalent” degree in Electronic Technology or Education Technology and the Alien did not meet that requirement, labor certification was properly denied.