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U.S. Citizenship
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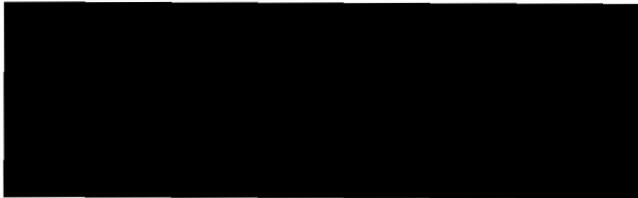
IN RE:

Petitioner:
Beneficiary:



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, Nebraska 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 logistics organization firm. It seeks to employ the beneficiary permanently in the United States as an IT customer solutions analyst. As required by statute, a Form ETA 750,¹ 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 of Science degree in Computer Science or a related discipline.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the beneficiary has the required educational credentials and meets the qualifications set forth in the approved labor certification.

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).

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.

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. *See* 8 C.F.R. § 103.2(b)(1), (12). *See also 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).

The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The priority date for the instant petition is July 22, 2002. On the Form ETA 750B, signed by the beneficiary on May 2, 2002, the beneficiary does not claimed to have worked for the petitioner.²

The key to determining the job qualifications is found on Form ETA-750 Part A. 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:

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

² A copy of an employment verification letter indicate that the beneficiary worked as an outside consultant to the petitioner from May 2001 to December 2002.

Education (number of years)

Grade school	(none stated)
High school	(none stated)
College	4
College Degree Required	B.S.
Major Field of Study	Computer Science or related discipline

Experience:

Job Offered	5 (yrs.)
Related Occupation	5 Five years experience in the job offered Or in a similar position required.

Block 15:

Other Special Requirements	(none stated)
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As set forth above, the proffered position requires a four years of college culminating in a Bachelor of Science degree in Computer Science or a related discipline and five years of experience in the job offered or a related occupation. DOL assigned the occupational code of 030-062.010 software engineer, 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/DOT?s=030-062-010%2C+software+engineering&g=GO> (accessed May 2, 2008) and its 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/15-1031.00>. (accessed May 2, 2008)). 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.

Since the position requires four years of college culminating in a Bachelor of Science degree in Computer Science or a related field of study and five years of experience, which is more than the minimum required by 8 C.F.R. § 204.5(l)(3)(ii)(C), combined with the DOL's classification and assignment of educational and experiential requirements for the occupation, the position is most properly analyzed as a professional. The professional category is the most appropriate category for the proffered position based on its educational and experience requirements.

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.

(Emphasis added.)

The above regulations use 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 from a college or university 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.

In support of the beneficiary's educational qualifications, the petitioner submitted a credential evaluation report, dated December 20, 2000, from [REDACTED] Ph.D. of Baruch College, The City University of New York. The evaluation cites the beneficiary's academic study at the University of Bharathiar and determines that it represents at least three years of academic studies leading to a Bachelor of Science Degree from an accredited institution of higher education in the United States. The evaluation then relies on a formula of three years of work experience equaling one year of college or university study to conclude the beneficiary's work experience represents an additional one-year of college-level training. Combining the beneficiary's professional training and employment experience with his three-year course of study at the University of Bharathiar, the evaluator concludes that the beneficiary has acquired "the equivalent of a Bachelor Science Degree in Computer Science from an accredited institution of higher education in the United States."

On appeal, counsel also submits a credentials evaluation, dated August 29, 2005, from [REDACTED] of Career Consulting International. Counsel further provides an additional evaluation, dated August 30, 2005, from [REDACTED] Educational Consultants, Ltd. (UK) who is a senior consultant to Career Consulting International. Both [REDACTED] erroneously refer to the director's denial letter in referring to courses in the beneficiary's transcript carrying a 100 point total. This statement is not contained in the director's denial letter. However, both evaluators discuss the beneficiary's three-year course of study with reference to his actual contact hours. Based on the beneficiary's syllabus, [REDACTED] states that beneficiary's course of study somehow represents over 4300 contact hours equating to 132 credits, while a U.S. bachelor's degree traditionally represents 1800 contact hours which translates to 120 credits. In contrast, [REDACTED] states that a regionally accredited U.S.

[REDACTED] indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from [REDACTED] but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr/index1.html, [REDACTED] awards degrees based on past experience.

bachelor's degree represents 180 credits, but also finds that the resulting credits are higher for the beneficiary's degree.

Counsel also submits a letter, dated August 31, 2005, from [REDACTED] who is the director of the Executive MBA program at Baldwin Wallace College in Berea Ohio. [REDACTED] advises that the beneficiary "has been accepted, registered and is participating the Master of Business Administration in Executive management program of Baldwin-Wallace College." He adds that the beneficiary's admission to the graduate program was based upon their evaluation that the beneficiary possesses a foreign academic degree that is equivalent to a baccalaureate degree acquired from an accredited institution within the United States. No other specific explanation was offered, such as the method used to determine that the beneficiary's three year degree was the equivalent to a U.S. baccalaureate degree.

The response to a request for additional evidence issued by this office was submitted by an attorney who represents the beneficiary and the petitioner of a separate petition. As this attorney does not represent the petitioner of this petition, that attorney will not be recognized. We will, however, consider the response. The attorney also asserts that the beneficiary possesses a foreign degree equivalent to a U.S. Bachelor of Science degree and meets the requirements of the labor certification. The attorney refers to a letter dated January 7, 2003, from [REDACTED] of the INS Office of Adjudications to counsel in other cases, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). The attorney also contends that *Matter of Shah* does not forbid CIS from using its discretion to determine that a 3-year foreign degree is equivalent to 4-year U.S. bachelor's degree.

At the outset, it is noted that Section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describes the role of the DOL in the labor certification process as follows:

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.

It is left to CIS to determine whether 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).⁴

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(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. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree 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.

We note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. 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

⁴ The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

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).

combined education and work experience. *Snapnames.com, Inc.* at *8-9. 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 *7-8. 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 *10,11. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the ETA 750 and does not include alternatives to a four year bachelor's 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.

The proffered position of an IT Customer Solutions Analyst requires the applicant to have attended 4 years of college and possess a U.S. Bachelor of Science or a foreign equivalent degree in Computer Science or a related discipline. One of the evaluations surmises that the beneficiary's degree from Bharathiar University represents at least three years of undergraduate study and, that when combined with experience may be equated to a U.S. Bachelor of Science degree in Computer Science. The other two evaluations assert that the beneficiary's three-year degree actually represents at least an equivalency in contact and credit hours to a four-year U.S. bachelor's degree. As noted above, it is unclear upon what basis the evaluation of Baldwin Wallace College was conducted. We find these contradictory opinions to be unpersuasive in concluding that the beneficiary's 3-year foreign degree is equivalent to a 4-year U.S. Bachelor of Science degree. 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. 582, 591-592 (BIA 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. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). It is further noted that private discussions and correspondence solicited to obtain advice from CIS, such as Mr. Hernandez' letter, are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); see also, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience.

Moreover, as advised in the request for evidence issued to the petitioner by this office, 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, 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/index.php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” Authors for edge are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at [www.aacrao.org/publications/guide to creating international publications.pdf](http://www.aacrao.org/publications/guide%20to%20creating%20international%20publications.pdf). If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

In the section related to the Indian educational system, EDGE indicates that an Indian Bachelor of Science degree is awarded after two to three years of tertiary study beyond a higher secondary certificate.

It is further noted that information contained in the AACRAO PIER publication, *A P.I.E.R. Workshop Report on South Asia: The Admission and Placement of Students from Bangladesh, India, Pakistan and Sri Lanka (1986)* indicates that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. As with EDGE, this publication represents conclusions vetted by a team of experts rather than the opinion of an individual. In *A P.I.E.R. Workshop Report on South Asia* at 180 explicitly states that “transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year.” The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate “may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis.”

The Form ETA 750 does not provide that the minimum academic requirements of four years of college and a B.S. degree in Computer Science or a related discipline might be met through a lesser degree or combination of employment experience and formal education. The copies of the notice of internal job posting, internet and newspaper advertisements, provided with the petitioner’s response to the request for evidence issued by this office, also fail to advise any otherwise qualified U.S. workers that the educational requirements for the job may be met through a lesser degree or defined equivalency.

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) 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.