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Services

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Office: NEBRASKA SERVICE CENTER

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Petitioner:

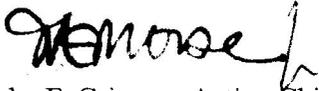
Beneficiary:

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.

  
John F. Grissom, Acting 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 retail industrial packing distributor.<sup>1</sup> It seeks to employ the beneficiary permanently in the United States as an systems administrator. As required by statute, an ETA Form 9089, Application for Permanent 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 U.S. baccalaureate degree or a foreign equivalent degree.

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 9089 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 ETA Form 9089 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 31, 2006.

Part H of the ETA Form 9089 specifies the employer's minimum requirements for the certified position of a systems administrator. Part H, 4 and H-4-B state that a bachelor's degree in computer science is the minimum educational requirements specified by the employer. Part H-6 and 6-A indicate that 12 months of experience in the job offered of systems administrator is also required. Part H-7 indicates that no alternate field of study is acceptable.

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<sup>1</sup> On Part 5 of the Immigrant Petition for Alien Worker (I-140), the petitioner states that it was established in 1920 and employs 150 workers.

Part H-8 of the ETA Form 9089 indicates that the employer does not accept an alternate combination of education and experience from the applicant. Part H-9 indicates that a foreign educational equivalent is acceptable. The employer indicates in Part H-10 that experience in an alternate occupation is not acceptable. Part H-11 provides for a description of job duties of the certified position of systems administrator. It merely refers to an attachment found on page 11 of the ETA Form 9089, which states:

Maintain and optimize company's current systems performance and ensure efficient operations and uptime of the company's e-commerce site and related systems. Provides upper level computer network administration and reviews all on-call duty for servers at the office and the collocation facility. Monitor, review, analyze, maintain and troubleshoot all PBX systems as well as analyze and optimize Network Operating Systems. Use of Computers and programs such as MS Office Suites 2000, XP, MS Exchange Server 2000, 2003, IIS Server 5.0 and 6.0, Cisco PIX Firewall 515.

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education that he has achieved relevant to the requested occupation is "Bachelor's." He indicates on Part J-12, J-13, J-14, J-15 and J-16 that this degree was obtained in computer science in 1999 from Preston University in Lahore, Pakistan.

As set forth above, the proffered position requires a bachelor's degree in Computer Science and 12 months of experience in the job offered of systems administrator. DOL assigned the occupational code of 15-1071.00, network & computer systems administrators, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards.

According to DOL's public online database<sup>2</sup> 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." 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/15-1071.00>. 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.*

It is noted that in Part I-a.1. of the ETA Form 9089, the petitioner designates the application as one for a professional occupation. Since the position requires a bachelor's degree in computer science and one year of experience in the certified position, which is more than the minimum required by 8 C.F.R. §

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<sup>2</sup> <http://online.onetcenter.org/link/summary/15-1071.00>

204.5(l)(3)(ii)(C), combined with the DOL's classification and assignment of educational and experiential requirements for the occupation, as well as the job requirements itself including upper-level computer network administration, the petition must be considered as for a professional.

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.

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) describe 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).<sup>3</sup>

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).

We note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, (2006 WL 3491005) (D. Or. 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. *Id.* 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. *Id.* at \*14. However, the court found that it was reasonable for CIS to require a single degree for a professional. *Id.* at \*10-11. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, CIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at \*7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, CIS

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<sup>3</sup> 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 (9<sup>th</sup> Cir. 1984).

“does not err in applying the requirements as written.” *Id.* See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a “bachelor’s or equivalent” requirement necessitated a single four-year degree.) It is noted that this case does not involve the ETA 750 labor certification, but sets forth the petitioner’s requirements on the ETA Form 9089, which as noted above, clearly specifies that the labor certification application is for a professional.

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of “an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study.” (Emphasis added.) It is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word “degree” in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5<sup>th</sup> Cir. 1987). It can be presumed that Congress’ narrow requirement of a “degree” for members of the professions is deliberate.<sup>4</sup>

In this case, in support of the beneficiary’s educational qualifications, the petitioner provided the following with the petition and in response to the AAO’s notice of intent to dismiss the appeal issued on July 1, 2008:

- (1) Copies of a diploma from Preston University with the words “United States of America” under its name, along with a grade transcript indicating that it awarded a Master of Science in Computer Science to the beneficiary on August 20, 1999, based on 36 completed credit hours or slightly more than two semesters.<sup>5</sup> The grade transcript indicates that the campus was located in Lahore, Pakistan.
- (2) A copy of a diploma from the University of Punjab and accompanying grade transcript indicating that the beneficiary received a Bachelor of Arts degree in May 1997. Beyond five courses listed on the transcript as 1. Isl. Studies/ethics and Pak. Studies (Comp), 2. English Language ((Comp., (illeg.)), 3. Economics, 4. Punjabi, and 5. Persian (opt), no other classes are listed. As noted in the AAO’s notice of intent to dismiss, the academic equivalency evaluation submitted by the petitioner, dated November 10, 2006, from ██████████ of the Trustforte Corporation, indicated that entry level courses of general studies include courses in the social sciences, mathematics and the sciences. These courses were not found on any grade transcript submitted, although the petitioner subsequently provided two documents from the University of Punjab indicating that the beneficiary’s degree represented two years of academic study.

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<sup>4</sup> In another context, Congress has broadly referenced “the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning.” Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate “degree” and be a member of the professions reveals that member of the profession must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require “a” degree that is the foreign equivalent of a U.S. baccalaureate, generally, we could not consider education earned at an institution other than a college or university.

<sup>5</sup> The beneficiary’s transcript reflects that the 14 classes taken were each 3 credit hours with two courses that were repeated. He completed the entire course between the fall of 1996 and the fall of 1998.

- (3) A copy of a diploma from the Petroman Training Institute in Shadman, Lahore, Pakistan under the authority of the Punjab Board of Technical Education, Lahore as identified on the diploma. The diploma states that the beneficiary passed a one-year diploma in computer science examination in 1995. The diploma was awarded on April 5, 1999.
- (4) Two copies of vocational/professional certificates from Microsoft and Cisco Career **Certifications**. The Microsoft document is undated and merely states that the beneficiary completed requirements to be recognized as a Microsoft professional. Copies of two subsequent Microsoft documents indicate that the underlying training supporting this certification was received in May 2005 and April 2006. The Cisco document is dated July 31, 2000, and certifies that the beneficiary is recognized as a "Cisco Certified Network Associate."

The petitioner has also submitted three academic equivalency evaluations. The first evaluation was completed by [REDACTED] M.A. of the International Credentials Evaluation firm and is dated November 17, 2001. This evaluation reviewed the beneficiary's studies at Preston University and the Petroman Institute and concluded that his studies at Preston University represented the satisfaction of *substantially* similar requirements "to the attainment of Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States." (emphasis added) Mr. [REDACTED] then discussed the beneficiary's diploma from the Petroman Institute in Lahore and determined that based upon the beneficiary's studies at these two entities, he had "attained the equivalent of a Bachelor of Science Degree in Computer Science, with coursework in Computer Science from an accredited institution of higher education in the United States."

The petitioner also submitted two equivalency evaluations from [REDACTED] of the Trustforte Corporation, dated November 10, 2006, and February 5, 2007. The earlier evaluation examines the beneficiary's academic studies at the Petroman Training Institute, his Bachelor of Arts degree from the University of Punjab and his Master of Science degree from Preston University. Mr. [REDACTED] determines that the beneficiary's studies at the University of Punjab are the equivalent of "two years of academic studies toward a bachelor's degree at an accredited U.S. college or university." He doesn't quantify the beneficiary's studies at the Petroman Institute into a U.S. equivalency, but states that his diploma is "analogous to the completion of bachelor's-level studies in the field of Computer Science at an accredited US college or university." The beneficiary's subsequent studies at Preston University and the award of a Master of Science degree are deemed to satisfy the academic requirements for a bachelor's-level concentration in Computer Science. The conclusion combines a review of all of the beneficiary's academic studies at Petroman, University of Punjab and Preston University and determines that when "considered together with his other post-secondary studies, indicates that the [beneficiary] attained the equivalent of a Bachelor of Science Degree in Computer Science from an accredited college or university in the United States."

The second evaluation from [REDACTED] of Trustforte Corporation, is dated February 5, 2007 and was submitted by the petitioner on appeal. This evaluation briefly notes the beneficiary's studies at the Petroman training institute and the University of Punjab further describes Preston University as a U.S. institution which offers advanced post-secondary programs that are based on the prior completion of

“bachelor’s-level studies. It states that “as discussed herein, [the beneficiary] completed an advanced post-secondary program in Computer Science at Preston University, in the United States. Based on the foregoing academic credentials, I find that [the beneficiary] attained the equivalent of a Bachelor of Science Degree in Computer Science from an accredited US college or university.” In this evaluation, Mr. [REDACTED], also determines that this degree is “the equivalent of a Bachelor of Science degree in Computer Science from an accredited college or university in the United States.”

The director denied the petition on October 18, 2006. He concludes that the petitioner had not demonstrated that the beneficiary had met the educational requirements of the ETA Form 9089 as of the priority date. The director based his conclusion on the beneficiary’s “two-year degree from Preston University” and his one-year diploma from Petroman Training Institute. As noted by counsel, the director failed to discuss the beneficiary’s two-year bachelor of arts degree from the University of Punjab.

As noted above, this office issued a notice of intent to dismiss the appeal on July 1, 2008. In that notice, this office advised the petitioner that U.S. based Preston University, currently headquartered in Alabama, was not an accredited institution in the U.S. as determined by a U.S. Department of Education accrediting association, and that as such, its degrees, although issued based on its operation in Pakistan, could not be deemed to be the U.S. equivalent of baccalaureate studies undertaken at a regionally accredited university or college in the United States, because Preston University, as set forth on the beneficiary’s diploma, was not itself accredited by an accrediting association recognized by the U.S. Dept of Education and thus could provide no assurance that its programs and procedures comported with recognized standards.

In response to this notice, relevant to accreditation of Preston University, the petitioner, through counsel, asserts that because Pakistan recognizes and accredits Preston University then this entity “should not be considered as an American University but as a fully recognized, and authorized and accredited university in Pakistan that is fully authorized by the Government of Pakistan.” Counsel submits documents in support of this contention. One is a copy of online information originating from Preston University, affirming that it is a recognized by the Higher Education Commission of the Government of Pakistan and the other is a copy of an online listing by the Higher Education Commission of Pakistan indicating that Preston University, Karachi and Preston University, Kohat are included among the recognized private institutions. Counsel also cites the language appearing on the first page of the document, which states that “The Law of Higher Education Commission Ordinance LIII of 2002 dated September 11, 2002 (video section 10) (1) clause o) empowers the Commission to ‘determine the equivalence and recognition of the degrees, diplomas and certificates awarded by the institutions within the country and abroad.’

Counsel’s assertion that this language means that the Pakistani higher education authority may determine a U.S. equivalency is not supported by the language cited above. We find that although it is clear that Preston University may be a recognized institution in Pakistan, a commonsense interpretation of this language is that it is intended to express Pakistani authority to determine an equivalency within the Pakistani educational system, not the U.S. educational system.

Counsel maintains that the language of the ETA Form 9089 at H-9 indicates that the petitioner will accept a foreign educational equivalent to the requirement of obtaining a U.S. bachelor of science degree in computer science. Counsel also asserts that the employer’s intent was to consider a wide range of applicants for the certified job. In a letter dated July 14, 2008, [REDACTED], the petitioner’s human resources manager indicated that consideration would be given to applicants whose education represented one or more degrees that when taken together and/or in combination with each other is considered as the foreign

equivalent to a U.S. Bachelor's Degree in Computer Science. A letter, dated January 30, 2006, addressed to the DOL, summarized the petitioner's recruitment efforts and concluded by stating that "the requirements for the position include a Bachelor's Degree in Computer Science and one year of experience. We are ready and willing to accept a foreign degree that has been determined to be equivalent to a Bachelor degree in Computer Science."

It is noted that a review of the various internal, online, and newspaper advertisements placed by the petitioner for the certified job indicates that the educational requirements for the position appeared on only the internal posting required by pertinent DOL regulations and on two online "Caljobs" listings. On the internal posting, the requirements are stated as a BS or equivalent degree in Computer Science and "1 yr. Exp." The Caljobs listing simply requires a bachelor's degree and "1 yr. Exp." As stated by counsel and [REDACTED] in her July 14, 2008, letter, the omission of education and/or experience and/or salary from most of the recruitment advertising, and as permitted by DOL, was done in order to open up the labor market to any qualified workers.

It remains, that 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.

In this case, the regulation at 8 C.F.R. § 204.5(l)(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. Further, as noted by the director, 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 may not be concluded that the combination of the petitioner's two-year bachelor of arts degree from the University of Punjab, his one year diploma from the Petroman Training Institute and his degree from US based (but unaccredited) Preston University cumulatively represents a foreign equivalent degree to a U.S. Bachelor's degree in Computer Science.

The ETA Form 9089 does not provide that the minimum academic requirements of a Bachelor's degree in Computer Science might be met through a lesser combination of degrees or diplomas. To the extent that the copies of the notice of internal job posting, internet and newspaper advertisements, provided with the

petitioner's response to the notice of intent to dismiss the appeal issued by this office, reflected any education requirement, they generally followed the requirement of the ETA Form 9089 and did not elaborate so as to advise DOL and any otherwise qualified U.S. workers that the educational requirements for the job may be met through a combination of lesser degrees or a 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.