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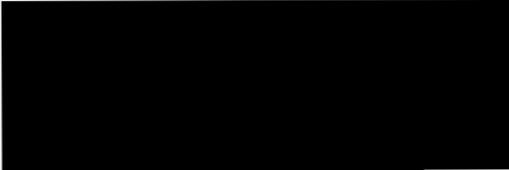
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FILE: [REDACTED]
LIN-05-242-51144

Office: NEBRASKA SERVICE CENTER

Date: OCT 10 2008

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, Nebraska Service Center (“director”), denied the employment-based immigrant visa petition. The petitioner appealed and the matter is now before the Administrative Appeals Office (“AAO”). The appeal will be sustained. The petition will be approved.

The petitioner’s business is software development and information technology, engineering and consulting. It seeks to employ the beneficiary permanently in the United States as a software engineer (“Software Engineer - Application”). As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (“DOL”). 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 four-year bachelor’s degree as listed on Form ETA 750.

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

The petitioner must establish that its ETA 750 job offer to the beneficiary is a realistic one. A petitioner’s filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later filed based on the approved ETA 750. 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). Therefore, the petitioner must establish that the job offer was realistic as of the priority date, and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner’s ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2).

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). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

Here, the Form ETA 750 was accepted for processing by the relevant office within the DOL employment system on April 21, 2003. The Form ETA 750 was certified on August 7, 2003, and the petitioner filed the I-140 petition on the beneficiary's behalf on August 17, 2005.² The petitioner listed the following information on the I-140 Petition: date established: 1998; gross annual income: \$4 million; net annual income: not listed; and current number of employees: 125.

On December 9, 2005, the director issued a Request for Evidence ("RFE"). The RFE noted that the petitioner's instant petition "appears to be a duplicate of your original petition . . . that is was [sic] denied, and is currently with AAO on appeal. Therefore, [Citizenship and Immigration Services ("CIS")] must either wait for the decision and return of the original petition in order to use the Form ETA 750, or the petitioner's withdraw of the original petition to AAO. " The petitioner responded that CIS should hold the decision on the instant petition until such time as the AAO rendered a decision on the first petition on appeal.

The appeal related to the first petition was dismissed. The director then denied the petitioner's second petition on the basis that the petitioner failed to establish that the beneficiary met the qualifications of the certified labor certification. The director determined that the petitioner did not establish that the beneficiary had a four-year Bachelor's degree, which was listed as a requirement on the certified labor certification. The petitioner again appealed to the AAO.

On appeal,³ counsel asserts that CIS erred in denying the petition as the beneficiary had the foreign equivalent of a bachelor's degree based on his admission to Anna University, where he received a Bachelor of Technology degree. Counsel asserts that the beneficiary received his degree in three years as he was admitted with advanced standing, but the degree itself is equivalent to a four-year degree.

For the reasons discussed below, we find that 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.

According to the terms of the labor certification, the proffered position requires a four-year bachelor's degree or equivalent and one year of experience in the position offered or one year of experience in the related occupation of a programmer or an engineer. Because of those requirements, the proffered position is for a professional, but might also be considered under the skilled worker category. 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/link/summary/15-1031.00> (accessed October 1, 2008) 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/15-1031.00#JobZone> (accessed October 1,

² The petitioner had previously filed an I-140 Immigrant Petition on the beneficiary's behalf based on the same labor certification and position. That petition was denied by the director as the petitioner failed to demonstrate that the beneficiary had the education required by the certified labor certification. The AAO affirmed the director's decision.

³ New counsel filed the appeal on the petitioner's behalf.

2008).⁴ 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. Because of those requirements and DOL's standard occupational requirements, the proffered position is for a professional, but might also be considered under the skilled worker category.

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 that must be evidenced by a college or university record. 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.

The beneficiary possesses a foreign bachelor's degree in science and mathematics based on three years of education. He additionally completed a three-year bachelor of technology degree in electronics engineering. Thus, the issues are whether the beneficiary's three-year foreign degrees individually are equivalent to a U.S. baccalaureate degree, or, if not, whether it is appropriate to consider the beneficiary's combined degrees as equivalent to one U.S. bachelor's degree. We must also consider whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

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

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

⁴ DOL previously used the Dictionary of Occupational Titles ("DOT") to determine the skill level required for a position. The DOT was replaced by O*Net. Under the DOT code, the position of software engineer has a SVP of 8 allowing for four or more years of experience.

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).⁵ *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

⁵ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

“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).

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. 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). 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.

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

Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL’s role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS’s decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (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).

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).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore Nov. 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 intent regarding educational equivalence is clearly stated and does not include alternatives to a bachelor’s degree.

The key to determining the job qualifications is found on Form ETA-750 Part A. This section of the application for alien labor certification, “Offer of Employment,” describes the terms and conditions of the job

offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

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

On the Form ETA 750A, the "job offer" position description for a software engineer provides:

Develop, create and modify general computer applications software and customize applications to meet client's needs; administer MQSeries running on Unix, OS390, Tandem and NT environment; develop utilities in C and Java to test and simulate production problems; install the support pacs for generating report on the SMF data; use Oracle, J2EE, C/CC++, Sun Solaris 5.8, Unix shell.

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:

Education:	College: 4 years; College degree: "BS;"
Major Field Study:	Science or Engineering or Technology or Electronics;
Experience:	1 year in the job offered, or 1 year in the related occupation of Programmer or Software Engineer.

Other special requirements: none listed.

To determine whether a beneficiary is eligible for a preference immigrant visa, CIS must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

On Form ETA 750B, signed by the beneficiary, the beneficiary listed his prior education as: (1) University of Madras, Madras, India; Field of Study: Science, Mathematics; from July 1990 to June 1993, for which he received a bachelor's degree; and (2) Anna University, Madras, India; Field of Study: Electronics Engineering; from July 1993 to June 1996, for which he received a Bachelor's degree. The record contains copies of the beneficiary's diplomas and transcripts to corroborate the education represented.

The petitioner submitted an evaluation of the beneficiary's education in order to document that the beneficiary met the educational requirements of the labor certification:

Evaluation One:

- Evaluation: Medgar Evers College of the City University of New York School of Business, Brooklyn, New York.
- The evaluation considered that the beneficiary completed a Bachelor of Technology at Anna University, an accredited institution of higher education in India. The evaluator states that admission to Anna University is based on completion of secondary-level studies and competitive entrance exams.
- The evaluator states that prior to beginning studies at Anna University, the beneficiary completed a three-year Bachelor of Science program in Mathematics at the University of Madras. The University of Madras awarded the beneficiary a Bachelor of Science degree in March 1993.
- Following completion of the beneficiary's studies at the University of Madras, the beneficiary began a program of study at Anna University for a Bachelor of Technology degree. The evaluator explains, "He entered the Bachelor of Technology program with advanced standing, based on transfer credits arising from his prior completion of bachelor's studies at the University of Madras. Thus, he entered Anna University as a second-year student, with the first year of studies completed as part of his Bachelor of Science at the University of Madras." The evaluator continues, "While the Bachelor of Technology program is a four-year program, [the beneficiary] only was required to complete three years of studies due to the fact that he completed a three-year Bachelor of Science program at the University of Madras prior to entering Anna University."
- The evaluator described Anna University's Engineering program's curriculum as comprising both general studies and more specialized advanced bachelor's level studies, which leads to a bachelor's level diploma. Specifically, the general studies include entry-level courses in social sciences, math, and other science courses, which would be a "requisite component of a bachelor's degree from an institution of higher education in the United States." Concentrated studies included courses in Electronics Engineering, Electrical Drives and Circuits, Microprocessors, Digital Circuits, Communications, and related subjects. In May 1996, the beneficiary received a bachelor of technology degree.
- The evaluator states:

It is noted that the Bachelor of Technology program completed by the candidate at Anna University is considered a four-year single-source degree, regardless of whether the program was completed in four years or any shorter period of time. Anna University awards the Bachelor of Technology Degree only upon the fulfillment of all bachelor's requirements, regardless of whether some credits were attained in prior programs of study. Similarly US universities award bachelor's degrees, considered to be complete bachelor's degrees in every respect, regardless of whether some studies were completed at other institutions. Thus, it is evident that the Bachelor of Technology Degree issued to the candidate by Anna University is equivalent to a four-year degree issued by a college or university in India or the United States.

- The evaluator concluded that based on the reputation, years of study, and nature of the coursework that the beneficiary had attained the equivalent of a bachelor's degree in Electronic Engineering from an accredited institution of higher learning in the United States.

The director denied the petition as the Form ETA 750 required that the petitioner have a four-year bachelor's degree, and the beneficiary's degree was based on three-years of study. Therefore, the director determined that the beneficiary did not meet the requirements of the certified Form ETA 750.

The petitioner filed an appeal and provided additional educational evaluations, an expert letter, and an explanatory letter from Anna University.

Evaluation Two:

- Evaluation: The Trustforte Corporation, New York, New York.
- The evaluation considered the beneficiary's studies at Anna University, where he completed both general studies and specialized studies, which lead to the award of a bachelor's degree. Admission to Anna University is based on completion of secondary-level studies and competitive entrance exams.
- The evaluator states that the generalized courses included entry-level courses in the social sciences, math, and sciences. Advanced level courses included Electronics Engineering, Computer Programming, Electrical Circuits, Digital Circuits, Electronic Devices, Communications Systems, and other courses.
- Following completion of his coursework, Anna University issued the beneficiary a Bachelor of Engineering degree, which the evaluator determined to be "equivalent of a Bachelor of Science degree in Electronic Engineering from an accredited US college or university."
- The evaluator additionally opines that, "it is significant that the academic study of Electronic Engineering is closely related to the area of Computer Science and Computer Engineering. Indeed, the field of Electronic Engineering serves as the fundamental academic underpinning for the study of Computer Science."

The evaluation was based only on the beneficiary's studies at Anna University and not the beneficiary's prior program of study.

The petitioner also submitted two letters related to Anna University's educational practices.

Letter One:

- Letter from the Dean, MIT Campus, Madras Institute of Technology ("MIT"), Anna University, Chromepet, Chennai, India, dated October 17.
- The Dean confirms that the beneficiary studied in the Bachelor of Technology (B.Tech.) program in Electronics, Madras Institute of Technology, Anna University from July 1993 to April 1996 and was awarded a B.Tech. degree.
- The Dean explains, "The B.Tech program at M.I.T. is a Post B.Sc. degree program of three years duration for which a B.Sc. degree is a pre-requisite, and is recognized as equivalent to a four-year Bachelor of engineering or Bachelor of Technology degree awarded by any recognized Indian University."
- The Dean further explains that MIT, Anna University, "recognizes and considered that the Bachelor of Science degree (B.Sc.) in Mathematics and the credits that [the beneficiary] received from University of Madras (1990 to 1993) for his admission into this B.Tech program." Additionally, "the candidates who possess this B.Tech. degree from M.I.T. are eligible for admission into the Master program in Engineering or Technology degree at any recognized Indian University."

Letter Two:

- Letter from [REDACTED], Director, Centre for University-Industry Collaboration, Anna University, Chennai, India, dated July 6, 2005.
- [REDACTED] states that Anna University is an accredited institution that provides advanced and specialized courses in Engineering, in addition to conventional engineering courses, to address “the growing need of specialty engineers in the modern industries.”
- [REDACTED] explains that “In India, Bachelor’s degree in arts, commerce and sciences is three years of education (after 12 years of school education). Bachelor degree in professional field of study in agriculture, dentistry, engineering, pharmacy, technology, and veterinary medicine generally take four years, while architecture and medicine, it takes five and five and a half years respectively.”
- He states that the duration of the regular Bachelor’s Degree in Engineering and Technology at Anna University is four years, and that the admission requirement is a Higher Secondary School Certificate (Senior High School/12th Grade). First year curriculum includes courses in Mathematics, Physics, Chemistry and English. Second year courses include Basic Engineering, Engineering Materials, Mechanics of Solids & Fluids, Machine Design, and Electrical and Electronics. The following two years consist of engineering courses focused on one branch or specialty.
- [REDACTED] explains that admission to M.I.T., until 1996, required a Bachelor’s degree in Science as the minimum entry requirement into the specialized B.Tech. program.
- As the first year B.Tech. program consists of general Math, Physics, Chemistry and English courses, entrants to the B.Tech program who hold a B.Sc. have already completed such coursework, and are therefore “considered as a lateral entry into the second year of a 4 year degree program. It is similar to transferring course credit from one institution to other institution offering higher education.”

CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). 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, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Here, however, the evaluations are consistent in their findings and will be accepted.

Further, in determining whether any of the beneficiary’s educational programs are individually foreign equivalent degrees, we have additionally consulted the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). EDGE provides another source to consider in the evaluation of foreign credential equivalencies. ACCRAO, according to its website, www.accrao.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://accraoedge.accrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.”

EDGE provides that a Bachelor of Arts/Bachelor of Commerce/Bachelor of Science degree awarded in India represents the attainment of a level of education comparable to two years or three years of university study in the United States. Based on information in the record, this degree would be equivalent to three years of study

towards completion of a bachelor's degree in the U.S. The beneficiary further lists that he completed a bachelor's degree in technology. EDGE considers a Bachelor of Engineering/Technology equivalent to completion of a U.S. bachelor's degree, normally contingent on completion of four years of tertiary study beyond the Higher Secondary Certificate.

Two degrees, neither of which is the foreign equivalent of a U.S. baccalaureate, will not be presumed to be the foreign equivalent of a U.S. baccalaureate degree. In this matter, however, the evaluations, EDGE, and the letter from Anna University all consistently conclude that the normal engineering baccalaureate program in India is a four-year program equivalent to a U.S. bachelor of science in engineering. The beneficiary was admitted into a special three-year engineering program at Anna University designed for those who had previously successfully completed and received a three-year degree. Anna University confirms that this special three-year program, which appears to be similar to predicated student admission into a four-year program with advanced standing from an Advanced Placement course or community college credit, is equivalent to a four-year bachelor of technology or bachelor of engineering program in India, which in turn, is equivalent to a U.S. bachelor of science in engineering. We conclude that the beneficiary has the required education to satisfy the terms of the certified labor certification. Therefore, the petition is approvable in the professional category since the beneficiary holds a single foreign equivalent degree to a U.S. baccalaureate degree and is a member of the professions.

Based on the foregoing, the petitioner has established that the beneficiary met the qualifications of the certified labor certification. 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 been met.

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