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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

BL

FILE:

[REDACTED]  
LIN 03 237 50093

Office: NEBRASKA SERVICE CENTER

Date:

OCT 29 2008

IN RE:

Petitioner:  
Beneficiary:

[REDACTED]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The Director, 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 sells and delivers technology infrastructure solutions. It seeks to employ the beneficiary permanently in the United States as a VP-Operations & Production Management. As required by statute, a Form ETA 750,<sup>1</sup> Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner had not established its continuing financial ability to pay the proffered wage and had not demonstrated that the beneficiary obtained the requisite six years of employment experience in the job offered. The director also concluded that the petitioner had failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a Bachelor of Arts degree in Business or equivalent field of study.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the petitioner has had the financial ability to pay the proffered wage and has established that the beneficiary has the required employment experience and educational credentials necessary to meet 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.

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

(ii) *Other documentation*—

(A) **General.** Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) **Skilled workers.** If the petition is for a skilled worker, the petition must be

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

accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

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

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

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. The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on July 1, 2002.<sup>2</sup> The proffered wage is stated as \$130,000 per year.

The Immigrant Petition for Alien Worker (Form I-140) was filed on August 1, 2003. Part 5 of the petition indicates that the petitioner was established in January 2001, claims a gross annual income of seven million (VC funding) and currently employs twelve workers.

Form ETA 750B signed by the beneficiary on May 30, 2002, indicates that he has worked for the petitioner from October 2001 until the present (date of signing).

The job qualifications for the certified position of VP-Operations & Production Management are found on Form ETA-750 Part A. Item 13 describes the job duties to be performed as follows:

Formulate and administer organization policies by determining and executing product sourcing strategy, reviewing and analyzing operations costs and forecast data to determine departments or divisions progress toward stated goals and objectives; have established contacts and experience in strategic relationships and maximizing profitability by streamlining automation of business flow.

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<sup>2</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

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:

Education (number of years)

Grade school	(completed)
High school	(completed)
College	4
College Degree Required	<b>Bachelor of Arts</b>
Major Field of Study	Business or equivalent

Experience:

Job Offered	6 (yrs.)
(or)	
Related Occupation	(none stated)

Block 15:

Other Special Requirements	(none stated)
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As set forth above, the proffered position requires four years of college culminating in a Bachelor of Arts degree in Business or an equivalent major field of study and five years of experience in the job offered of VP-Operations & Production Management.

In support of the petitioner's ability to pay the proffered wage of \$130,000 per year, the petitioner submitted a copy of its Form 1120, U.S. Corporation Income Tax Return for 2001 with the I-140. It indicates that the petitioner uses a standard calendar year to file its tax returns, and contains the following information:

2001	
Net Income	-\$13,046,217
Current Assets	\$ 5,924,409
Current Liabilities	\$ 797,011
Net current assets	\$ 5,127,398

As noted above, net current assets are the difference between the petitioner's current assets and current liabilities and represent a measure of a petitioner's liquidity during a given period.<sup>3</sup> Besides net income, and as an alternative method of reviewing a petitioner's ability to pay the proffered wage, Citizenship and

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<sup>3</sup> According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

Immigration Services (CIS) will examine a petitioner's net current assets as a possible resource out of which a proffered wage may be paid. A corporation's year-end current assets and current liabilities are shown on Schedule L of the Form 1120 tax return. Current assets are found on line(s) 1(d) through 6(d) and current liabilities are specified on line(s) 16(d) through 18(d). If a corporate petitioner's year-end net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma from Wilfrid Laurier University, Waterloo, Ontario, Canada. It indicates that the beneficiary was awarded a Bachelor of Arts, General on October 28, 1990. The petitioner additionally submitted a credentials evaluation, dated October 23, 2001, from [REDACTED] of FHI-Frances Hewitt, Inc. The evaluation describes the beneficiary's diploma from Wilfrid Laurier University as a Bachelor of Arts degree in General Studies and concludes that it is equivalent to a Bachelor of Arts degree in General Studies from an accredited college or university in the United States. The evaluation then relies on a formula of three years of work experience equaling one year of university study to conclude that by combining the beneficiary's employment experience with his bachelor's degree, he has acquired "the equivalent of an individual with a *Bachelor of Arts Degree in Business Administration* from an accredited college or university in the United States." (Emphasis in original)

The director denied the petition on March 24, 2004. He determined that the petitioner had not submitted any employment verification letters and therefore had not demonstrated that the beneficiary had acquired six years of experience in the job offered as of the priority date of July 1, 2002. The director also determined that petitioner had failed to demonstrate its ability to pay the proffered wage and observed that no W-2s or other evidence of compensation paid to the beneficiary had been submitted. Finally, the director reviewed the requested visa classification under the skilled worker category<sup>4</sup> and concluded that the beneficiary's bachelor of arts degree in general studies could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in business because combining employment experience and academic qualifications is not permitted under relevant employment-based immigrant regulations.

On appeal, the petitioner submits copies of the beneficiary's Wage and Tax Statements (W-2s) for 2003 and 2004, as well as a copy of a recent pay voucher indicating that the petitioner had paid the beneficiary wages of \$130,000 in 2002; \$143,846.32 in 2003, and year-to-date-wages of \$33,461.58 as of the pay period ending March 14, 2004.

In determining the petitioner's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner may have employed and paid the beneficiary during the relevant period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage during a given period, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. To the extent that the petitioner paid wages less than the proffered salary, those amounts will be considered in calculating the petitioner's ability to pay the proffered wage during a

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<sup>4</sup> The AAO's subsequent request for evidence erroneously described the director's evaluation as under both the skilled worker and professional categories.

given period. If either the petitioner's net income or net current assets can cover the difference between the actual salary paid to the beneficiary and the proffered wage, the petitioner is deemed to have demonstrated its ability to pay the certified salary during this period. In this case, the beneficiary's W-2s and payroll record indicate that he was compensated at or above the proffered wage. The petitioner established its financial ability to pay the proffered wage.<sup>5</sup> This portion of the director's decision is withdrawn.

Relevant to establishing that the beneficiary had acquired six years of employment experience in the job offered of VP (vice-president)-Operations & Production Management, the petitioner provided copies of four letters. They may be summarized as follows:

- 1) [REDACTED], IT Program Manager for GE Energy states that the beneficiary worked as a Financial Planner and Analyst for GE Power Systems-Apparatus Technical Services (now GE Energy) from July 1995 to July 1996. His duties are described as including responsibility for "reporting and analysis of 12 profit and loss businesses, financial modeling, short range forecasts, and trend analysis."
- 2) [REDACTED], Vice President Sales & Marketing of Camco, a subsidiary of GE Appliances describes two positions held at that company:
  - a. Cost Reduction & Warranty Leader (July 1996 to August 1997), where the beneficiary identified "key opportunities for cost improvement, and implemented processes and policies to control costs across all functions of the business."
  - b. Business General Manager-Business Development- (Sept. 1997 to June 1999), where the beneficiary developed and delivered a "new go to market strategy for the business to increase product margins... He then was responsible for building and implementing the new store, the brand selling strategy, compensation, hiring inventory and demand generation."

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<sup>5</sup> It is noted that the 2001 tax return submitted with the I-140 also demonstrated the petitioner's ability to pay the certified salary through its net current assets of \$5,127,398. Although not necessary here, if the petitioner has not actually employed and paid the proffered wage to the beneficiary, CIS will next examine the net income figure (or net current assets) as reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. As set forth in the regulation at 8 C.F.R. § 204.5(g)(2), a petitioner may also provide either audited financial statements or annual reports as an alternative to federal tax returns, but they must show that a petitioner has sufficient net profit or net current assets to cover the proffered wage. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. at 1054 (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989)); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983); *River Street Donuts, LLC v. Chertoff*, Slip Copy, 2007 WL 2259105, (D. Mass. 2007).

- 3) [REDACTED] Human Resources Manager for GE Capital Technology Management Services states that the beneficiary worked as a VP Product General Manager from July 1999 to January 2000 and was responsible for principal products, services and markets. She also states that the beneficiary also provided “strategic direction for the services of systems integration including implementation, installation, configuration and analysis required to increase profit.” [REDACTED] further states that GE Capital Technology Management Services was renamed to GE IT Solutions.
- 4) [REDACTED] signs a separate letter and claims that the beneficiary was employed by GE IT Solutions as a VP Marketing and Production Management from January 17, 2000 to September 14, 2001. His duties included “providing strategic direction to markets, performed by analysis to identify, implement and execute strategies to increase profit.”

As noted above, the labor certification requires six years in the job offered as the qualifying employment experience necessary for the applicant for VP-Operations & Production Management. No related or alternative occupation or experience is listed. In determining whether a beneficiary has acquired the requisite job experience as of the priority date, both the job titles and job duties of previous employment should be reviewed. *See e.g., Matter of Maple Derby, Inc.* 89 INA 185 (BALCA 1991)(*en banc*). In this matter, however, even looking beyond the job titles identified in the letters from [REDACTED] and [REDACTED] it cannot be concluded based on the descriptions in these letters that the respective responsibilities of a financial planner and analyst at GE Power Systems-Apparatus Technical Services and a Cost Reduction & Warranty Leader at GE Appliances was as expansive and responsible as that described in the labor certification for the certified position of vice-president of operations and production management. As the remaining jobs described in the employment verification letters may be considered to represent a maximum of approximately four years of qualifying employment, the petitioner has not established that the beneficiary obtained the requisite six years of employment in the job offered as set forth in Part A of the ETA 750. It is further noted that the beneficiary failed to list his job at GE Energy as a financial planner and analyst on Part B of the ETA 750<sup>6</sup> and that the beginning and ending dates of the beneficiary’s previous employment at GE Capital Technology Management Services and GE IT, as well as at Camco are not consistent with the dates specified on the employment verification letters.<sup>7</sup> Given the above, the AAO concurs with the director’s assessment that the petitioner has not established that the beneficiary possessed the requisite work experience as of the priority date. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) (Doubt cast on any aspect of the petitioner’s proof may, to a reevaluation of the reliability and sufficiency of the remaining evidence offered.) This portion of the director’s decision is affirmed.

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<sup>6</sup> *See Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)

<sup>7</sup> The dates given for the beneficiary’s cumulative employment at GE Capital Technology Management Services and GE IT on the letters from [REDACTED] are from July 1999 until September 14, 2001, while Part B of the ETA 750 identifies it as starting in January 1999 to September 2001. The beneficiary’s cumulative employment at Camco is stated as beginning in July 1996 and ending in June 1999 in the letter from [REDACTED], while the ETA 750 B lists that experience as beginning in May 1996 and ending January 1999.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel, submitted a second FHI-Frances Hewitt, Inc. evaluation, dated April 22, 2004, accompanied by the beneficiary's grade transcript. On the grade transcript it is stated that the beneficiary's degree represents a Bachelor of Arts, General Program, Oct 1990 Major: Economics. The transcript indicates that the beneficiary primarily attended from January 1986 to May 1990 with one course listed in September 1985 with the notation "repeated later." Following a review of the transcript, the second Hewitt evaluation determines that the beneficiary's degree, standing alone, represents a foreign equivalent degree to a U.S. Bachelor of Arts Degree in Business Economics from an accredited college or university.

The Part A of the ETA 750 indicates that the DOL assigned the occupational code of 189.117-034, vice-president, 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=189.117-034%2C+vice+president&g+Go> (accessed August 20, 2008 under 11-1011.00-Chief Executive) 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 Five requiring "extensive preparation" for the occupation type closest to the proffered position.

DOL assigns a standard vocational preparation (SVP) range of 8.0 and above to the occupation, which means that "[A] bachelor's degree is the minimum formal education required for these occupations. However, many also require graduate school. For example, they may require a master's degree, and some require a Ph.D., M.D., or J.D. (law degree)." Additionally, DOL states the following concerning the training and overall experience required for these occupations:

Extensive skill, knowledge, and experience are needed for these occupations. Many require more than five years of experience.

Employees may need some on-the-job training, but most of these occupations assume that the person will already have the required skills, knowledge, work-related experience, and/or training.

*See id.*

Since the position requires four years of college culminating in a Bachelor of Arts degree in business or an equivalent major field of study and six 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 certified position must be considered as a professional occupation.

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

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date

the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

On November 19, 2007, the AAO issued a request for evidence to the petitioner. In this request, the AAO noted that there was no evidence in the record of proceeding that the beneficiary ever enrolled in classes beyond the academic studies at Wilfrid Laurier University (including transfer credit from the University of Waterloo). The AAO also noted that the petitioner did not specify on the Form ETA 750 that the minimum academic requirements of four years of college and a bachelor's of arts degree in a major field of study of business or an equivalent field of study might be met through a combination of lesser degrees and/or a quantifiable amount of work experience. The AAO further advised that according to the Fifth Edition (2003) of the American Association of Collegiate Registrars and Admissions Officer (AACRAO) *Foreign Educational Credentials Required*, a *general or pass* bachelor's degree in Ontario is equivalent to three years of undergraduate study and that the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually less than a four-year U.S. bachelor's degree or its foreign equivalent and/or a quantifiable amount of work experience when the labor market test was conducted.

In response to the request for evidence, counsel submits a copy of the beneficiary's high school diploma and asserts that it represented the completion of the thirteenth (13<sup>th</sup>) year of high school, which corresponds to the first (freshman) year of college in the United States and that this is analogous to transferring credits in the United States when a student moves after his freshman year from one university to another university. Counsel contends that the single Bachelor of Arts degree from Wilfrid Laurier University in Waterloo, Ontario, Canada equates to a U.S. Bachelor's degree in business administration and there is no requirement to view this formula as a combination of lesser degrees or diplomas.

In support of this contention and in response to the request for evidence, counsel submits a copy of the beneficiary's high school diploma that is dated July 1985 from Thistleton Collegiate Inst. and which indicates that it is a secondary school honours graduation diploma.

Counsel also provides a copy of a credentials evaluation, dated January 28, 2008, from Dr. [REDACTED] of the European-American University in the Commonwealth of Dominica.<sup>8</sup> He states that Ontario has thirteen years of high school and that the extra year corresponds to the first year of college and accounts for further general education requirements towards a bachelor's degree equivalency. Dr. [REDACTED] additionally states that the beneficiary's bachelor of arts degree with a major in economics from Wilfrid Laurier University

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<sup>8</sup> According to the evaluation the European-American University was founded and is directed by the Society for Humanistic Potential. Dr. [REDACTED] indicates that he has a canonical diploma of Sacrae Theologiae Professor, equivalent to a Doctor of Divinity.

“extended over three years of full-time postsecondary study” and that the beneficiary has “attained the equivalent of a Bachelor of Business Administration, with a major in Economics, from an institution of postsecondary education in the United States. An additional credential evaluation, dated January 28, 2008, from [REDACTED] of Marquess Educational Consultants, Ltd. (UK) also claims that the beneficiary’s postsecondary studies are considered to have established a functional equivalency of a “Bachelor of Business Administration, with a major in Economics, from an institution of post secondary education in the United States of America,” and equates the beneficiary’s attendance of the thirteenth year of high school to the British system of three-year bachelor’s degrees preceded by 13 years of high school culminating in the English A level.

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) 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.

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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.

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<sup>9</sup> Dr. [REDACTED] also indicates that he holds a Doctor of Divinity. According to the European-American University website, [www.thedegree.org](http://www.thedegree.org), it is an unaccredited “self-validating” university of which Dr. [REDACTED] is the president.

*Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).<sup>10</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).

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. 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, in professional and advanced degree professional cases, where the

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<sup>10</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).

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. *Id.* 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 on the ETA 750 and does not include alternatives to a four-year bachelor's degree. 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 "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.) In this matter, the ETA 750 does not specify an equivalency to the requirement of a four-year Bachelor of Arts degree. The only equivalency mentioned on the ETA 750 is for the field of study, whereby a major field of study of business or an equivalent is the stated requirement.

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.

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(1)(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.) Moreover, 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. Significantly, 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 we did not require "a" degree that is the foreign equivalent

of a U.S. baccalaureate, we could not consider education earned at an institution other than a college or university.

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 ACCRAO. According to its website, [www.accrao.org](http://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." 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.

As previously advised, at the time the online EDGE database was consulted, there appeared to be no specific information regarding the beneficiary's credentials, however, in revisiting the site and with the submission of a copy of the beneficiary's high school diploma, it is noted that in the section identified as North America: Canada Ontario and under Credential Description and Credential Advice for Secondary School Honours Graduation Diploma (SSHGD), the following information is presented:

Credential Description

Awarded after completion of 13 years of primary and secondary school. Last awarded in August 1989.

Credential Advice

The Secondary School Honours Graduation Diploma represents attainment of a level of education comparable to completion of senior high school in the United States.

Additionally, it is noted that EDGE's credential advice provides that a (3-year) Bachelor's degree is comparable to "3 years of university study in the United States. Credit may be awarded on a course-by-course basis."

The proffered position of VP-Operations & Production Management requires the applicant to have attended 4 years of college and possess a Bachelor of Arts degree. In the box identified as Major Field of Study, it requires Business or equivalent. The first Hewitt, Inc. evaluation surmises that the beneficiary's degree from Wilfrid Laurier University represents the equivalent U.S. degree of Bachelor of Arts degree in General Studies and additionally represents a U.S. degree of Bachelor of Arts degree in Business Administration when combined with the beneficiary's employment experience using a formula of three years of work experience equating to one year of university study. The second Hewitt, Inc. evaluation, apparently upon further review of the beneficiary's diploma and grade transcript from Wilfrid Laurier University concludes that the diploma is the equivalent foreign degree to a U.S. Bachelor of Arts Degree in Business Economics. The Linley evaluation claims that Ontario has

“thirteen years of high school,” with the extra year corresponding to the first year of college and that together with the beneficiary’s three years of post-secondary studies at Wilfrid Laurier University, represented the equivalent of a U.S. degree of “Bachelor of Business Administration” with a major of economics from an institution of postsecondary education. There is no claim that this equates to a degree from a regionally accredited U.S. college or university. Kersey’s evaluation advocates the same position.

The Hewitt evaluations fail to discuss the beneficiary’s high school diploma and simply equate the beneficiary’s three years of study at Wilfrid Laurier University to a 4-year U.S. bachelor’s degree either in business administration if his experience is calculated, or in business economics if the grade transcript is determinative. We do not find the Hewitt evaluations to be consistent or probative of the beneficiary’s credentials. As noted by the director, the first Hewitt evaluation used an equivalence to determine that three years of experience equaled one year of college to conclude that the beneficiary had achieved the equivalent of a U.S. four-year bachelor’s degree with a major in business administration, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. See 8 CFR § 214.2(h)(4)(iii)(D)(5). Further, we do not find any evidence in the AACRAO publication of *Foreign Educational Credentials Required*, at p. 45, which indicates that a *general* or *pass* bachelor’s degree in Ontario is equivalent to three years of undergraduate study and does not premise this on the underlying amount of primary and secondary education obtained. Further, as noted above, EDGE does not suggest that this beneficiary’s high school diploma is considered to be more than the equivalent of completion of senior high school in the United States rather than the freshman year of college or university. 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). Although it is noted that the beneficiary’s grade transcript from Wilfrid Laurier University indicate that the classes taken and his major of economics may be considered to be an equivalent alternate to the designated field of study of “business” as indicated on the ETA 750, it may not be concluded that the beneficiary has obtained a foreign degree equivalent to a 4-year U.S. Bachelor of Arts degree. 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.

The Form ETA 750 does not provide that the minimum academic requirements of four years of college and a Bachelor of Arts degree in Business or an equivalent major field of study might be met through three years of college or some other formula other than that explicitly stated on the ETA 750. The copies of the notice(s) of internet and newspaper advertisements, provided with the petitioner’s response to the request for evidence issued by this office, also fail to advise DOL or qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. It is noted that two of the internet advertisements submitted with the request for evidence even misstate the required years of work experience as ten rather than six years.

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.

Beyond the decision of the director, it is noted that the petitioner’s 2001 tax return initially submitted with the petition, indicates on Schedule E, statement 7, page 20, that the beneficiary is one of the corporate petitioner’s designated officers. Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden, when asked, to

show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987). A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by “blood” or it may “be financial, by marriage, or through friendship.” *See Matter of Summart 374*, 00-INA-93 (BALCA May 15, 2000). If or when future proceedings are initiated by this petitioner and beneficiary, further investigation and consultation with the DOL may be merited. *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401 (Comm. 1986),

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.