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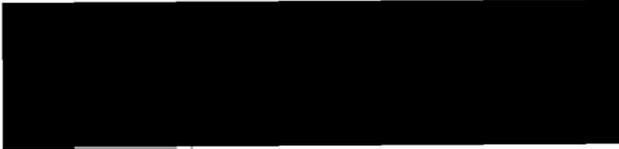
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals  
Washington, DC 20529

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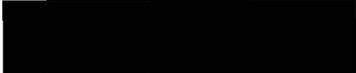


**U.S. Citizenship  
and Immigration  
Services**

B6



FILE: LIN 06 135 51590    Office: NEBRASKA SERVICE CENTER    Date: **APR 13 2009**

IN RE:    Petitioner:   
Beneficiary: 

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

ON BEHALF OF PETITIONER:  


**INSTRUCTIONS:**

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

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).



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 distributor of ergonomic products. It seeks to employ the beneficiary permanently in the United States as a marketing director. An ETA Form 9089, Application for Permanent 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.

On appeal, the petitioner submits additional evidence and contends that the beneficiary's educational credentials satisfied the terms of the labor certification and that the petition should be approved.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

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

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date, the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on August 30, 2003.<sup>1</sup> The Immigrant Petition for Alien Worker (I-140) was filed on April 5, 2006.

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<sup>1</sup> The ETA Form 9089 was converted from previously filed ETA 750 pursuant to the regulation at 20 C.F.R. § 656.17(d)(1)(i).

The job qualifications requirements are found on Form ETA-750 Part A. The ETA Form 9089, Part H set forth the minimum requirements for the position of Marketing Director. Part H, Item(s) 4 and 4-B reflect that the proffered position requires a Bachelor's degree in Business Administration and 12 months of experience in the job offered. Part H, Item 7 indicates that the employer will not accept an alternate field of study. Part H, Item 8 indicates that the employer will not accept an alternative combination of education and experience. Part H, Item 9 indicates that a foreign educational equivalent is acceptable. Part H, Item 10 indicates that the employer will not accept experience in an alternate occupation. Part I, Item a-1, indicates that the petitioner considers the certified position as a professional occupation.

In determining whether a beneficiary is eligible for a preference immigrant visa, United States Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS 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, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As stated on the labor certification, the proffered position requires a bachelor's in business administration or foreign equivalent degree, as well as 12 months of experience in the job offered. Because of the certified position's academic requirements set forth on the labor certification as well as the expansive managerial job duties described on Part H, 11 of the ETA Form 9089 and the petitioner's classification of the occupation as a professional on Item I, a-1 of the ETA Form 9089, the proffered position will be evaluated as a professional. We note that the petitioner had also requested consideration as a skilled worker in the underlying record through counsel, but for the reasons stated above, the certified position is more appropriately considered as a professional. DOL assigned the occupational code of 11-2022.00, sales manager, 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/11-2022.00><sup>2</sup> and extensive description of the position and requirements for the job, 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/11-2022.00>.<sup>3</sup> Additionally, DOL states the following concerning the training and overall experience required for these occupations:

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<sup>2</sup> (accessed 3/24/09)

<sup>3</sup> (accessed 3/24/09)

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

*See id.*

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

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

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

As noted above, the ETA 750 in this matter is certified by DOL. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

According to 20 C.F.R. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

Under § 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

- (1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and
- (2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14). *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

\* \* \*

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

*Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to

determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

*K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1984).

In this matter, in Part J, Item 11 of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is "Bachelor's." Part J, Item (s) 12,13, and 14 of the ETA Form 9089 indicate that she completed relevant education in 1998 at the University College, Dublin Ireland in 1998.

In corroboration of the ETA Form 9089 statement as to the beneficiary's educational credentials, the petitioner provided copies of the following:

- a) An August 1998 Certificate in Financial Services from The Institute of Bankers in Ireland and University College Dublin, dated August 1998;
- b) Certificate in Investment Advice from The Institute of Bankers in Ireland dated August

- 1998: the module results and awards issued for this Certificate and the Certificate in Financial Services as herein set forth in a) indicate that such modules which were examined in April were started in October and modules examined in September were commenced in February.
- c) A National Certificate in Business Studies in Secretarial Studies from Carlow Regional Technical College (Ireland) awarded on July 14, 1989; the grade transcripts provided in the petitioner's response to the AAO's request for evidence reflects that the duration of the program was for two years.
  - d) A copy of a certificate, dated November 12, 1990, from the Austin Waldron RTC, indicating that the beneficiary had been awarded a diploma in Technical Sales: The grade transcript provided in the petitioner's response to the AAO's request for evidence indicate that the program lasted one year.

The petitioner did not provide evidence of any prerequisites for admission as requested in the AAO's request for evidence issued on December 1, 2008, however the petitioner had provided an evaluation report of these credentials to the underlying record. ██████████ of Foundation for International Services, Inc. submitted an evaluation report dated November 14, 2000. She determines that the beneficiary's National Certificate in Business Studies in Secretarial Studies obtained from the Carlow Regional Technical College on July 14, 1989 is the U.S. "equivalent to an associate's degree (two years of university-level credit) in business" from an accredited college or university.

██████████ further determines that the beneficiary's November 12, 1990, certificate from the Austin Waldron RTC, indicating that she had received a diploma in Technical Sales is the U.S. equivalent to a third year of university-level credit in business from an accredited college or university. Ms. ██████████ characterizes Austin Waldron RTC as also designating Carlow Regional Technical College.

She additionally finds that the copies of the two August 1998 certificates from The Institute of Bankers in Ireland (and University College Dublin) affirming that the beneficiary received a Certificate in Financial Services and a Certificate in Investment Advice are the U.S. equivalent of completion of professional training from professional associations in the United States.

Finally, the Burke evaluation concludes that the beneficiary has the U.S. equivalent of 3 years of university-level credit in business from an accredited college or university and when combined with her professional work experience using a three-for-one formula (three years of experience equating to one year of undergraduate study), has the U.S. equivalent of a bachelor's degree in business administration with a concentration in banking from an accredited college or university.

The director denied the petition on April 10, 2007, based on his determination that the petitioner had failed to establish that the beneficiary's combination of certificates and diplomas satisfied the terms of the labor certification requiring a bachelor's degree.

On appeal, contending that the beneficiary's credentials fulfilled the terms of the labor certification, counsel asserts that the language of the earlier filed ETA 750, prior to conversion to the ETA Form

9089 characterized the educational requirements of the certified position as a Bachelor's Degree or equivalent in Business Administration. Counsel maintains that the petitioner intended this to mean a U.S. bachelor's degree in the relevant field or the equivalent of such a degree based on any combination of education and/or employment experience. If this is the petitioner's intent on the ETA 750, it was not expressed as such. Moreover, the copy of the uncertified ETA 750 provided to the record also designated that four years of college were required in item 14.

With respect to the Burke evaluation, it is noted that she used a formula to equate three years of experience for one year of education to reach a conclusion that the beneficiary possessed the U.S. equivalent to a bachelor's degree in business administration with a concentration in banking from an accredited university or college. That calculation, however, applies to non-immigrant H-1B petitions, not to immigrant petitions. See 8 CFR § 214.2(h)(4)(iii)(D)(5). USCIS may, in its discretion, use advisory opinions submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS, however, is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). Here, the Burke evaluation impermissibly combines academic studies with employment experience.

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 combination of certificates and diplomas, none of which specifically state that the beneficiary was awarded a bachelor's degree in any field, 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 (Regl. Commr. 1977). Under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(3) of the Act as she does not have the minimum level of education required for the equivalent of a bachelor's degree. Even if considering at most, the beneficiary's attainment of three years of undergraduate university studies, this would not qualify as a four-year bachelor's degree as set forth on the ETA 750 referred to by counsel. Moreover, as noted above, the petitioner affirmed in H-8 of the ETA Form 9089 that it would not accept an alternate combination of education and experience. If a defined alternate combination was acceptable, then the petitioner could have described this alternative in other provisions in part H-8 or even in H-14 where other requirements are also permitted to be specified.

That said, even if this job could also be considered in the skilled worker category as defined in section 203(b)(3)(A)(i) of the Act,<sup>4</sup> the evidence related to the petitioner's intent as to the acceptable alternative requirements pertinent to the employer's recruitment efforts remains relevant.

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<sup>4</sup>The regulation at 8 C.F.R. § 204.5(l)(3) further provides:

As referenced by the petitioner, we are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d, which found that [USCIS] “does not have the authority or expertise to impose its strained definition of ‘B.A. or equivalent’ on that term as set forth in the labor certification.” In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church* at \*8 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since CIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. See section 103(a) of the Act, 8 U.S.C. § 1103(a). In reaching this decision, the court also concluded that the employer in that case tailored the job requirements to the employee and that DOL would have considered the beneficiary’s credentials in evaluating the job requirements listed on the labor certification.<sup>5</sup>

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(ii) *Other documentation—*

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

<sup>5</sup> Specifically, as quoted above, the regulation at 20 C.F.R. § 656.21(b)(6) requires the employer to “clearly document . . . that all U.S. workers who applied for the position were rejected for lawful job related reasons.” BALCA has held that an employer cannot simply reject a U.S. worker that meets the minimum requirements specified on the Form ETA-750. See *American Café*, 1990 INA 26 (BALCA 1991), *Fritz Garage*, 1988 INA 98 (BALCA 1988), and *Vanguard Jewelry Corp.* 1988 INA 273 (BALCA 1988). Thus, the court’s suggestion in *Grace Korean* that the employer tailored the job requirements to the alien instead of the job offered actually implies that the recruitment was unlawful. If, in fact, DOL is looking at whether the job requirements are unduly restrictive and whether U.S. applicants met the job requirements on the Form ETA 750, instead of whether the alien meets them, it becomes immediately relevant whether DOL considers “B.A. or equivalent” to require a U.S. bachelor degree or a foreign degree that is equivalent to a U.S. bachelor’s degree. We are satisfied that DOL’s interpretation matches our own. In reaching this conclusion, we rely on the reasoning articulated in *Hong Video Technology*, 1998 INA 202 (BALCA 2001). That case involved

Additionally, we also note the subsequent decision in *Snapnames.com, Inc. v. Michael Chertoff*, CV 06-65-MO (D. Ore. November 30, 2006). In that case, the ETA 750 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 as a “specific level of *educational background*.” *Snapnames.com, Inc.* at \*6. 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 [USCIS] properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at \*17, 19. However, in *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) (D.C. Cir. March 26, 2008) the court upheld an interpretation that a “bachelor’s or equivalent” requirement necessitated a single four-year degree in a professional category and additionally noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) required skilled workers to submit evidence that they meet the minimum job requirements of the individual labor certification. In that case, the ETA 750 described the

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a labor certification that required a “B.S. or equivalent.” The Certifying Officer questioned this requirement as the correct minimum for the job as the alien did not possess a Bachelor of Science degree. In rebuttal, the employer’s attorney asserted that the beneficiary had the equivalent of a Bachelor of Science degree as demonstrated through a combination of work experience and formal education. The Certifying Officer concluded that “a combination of education and experience to meet educational requirements is unacceptable as it is unfavorable to U.S. workers.” BALCA concluded:

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

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

educational requirement as Bachelor's or equivalent" and that it required a four-year education. The court additionally upheld the USCIS denial in this context as well, where it would have necessitated the combination of the alien's other credentials with his three-year diploma to meet the requirements of the ETA 750. *Id* at \*13-14. In this case, the beneficiary must possess a bachelor's degree in business administration. The petitioner failed to specify any defined equivalency on either the earlier ETA 750 or the ETA Form 9089. The beneficiary's formal education does not equate to a bachelor's degree in business administration or satisfy the requirements of the labor certification in either a professional or skilled worker category.

It is noted that as referenced in *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984), CIS is obliged to "examine the certified job offer *exactly* as it is completed by the prospective employer." (Emphasis added). CIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (Emphasis added).

A review of the petitioner's recruitment efforts in the form of an online advertisement in Careerbuilder.com and copies of two undated posting notices indicated that the petitioner described the education and experience requirement for the certified position as "Req BS Deg/equiv in Bus Admin + 1 yr. exp/equiv." Copies of two undated posting notices merely stated the educational requirement as "Bachelor's degree equivalent in Business Administration." Neither served to clearly communicate to any otherwise qualified U.S. worker what kind of an acceptable equivalency would be required. Upon review of the seventeen resumes received from interested applicants, all but two appeared to have full bachelor's degrees of some kind and none appeared to specifically interpret the educational requirement as being met with some combination of lesser diplomas and/or experience.

The beneficiary has not completed four years of college culminating in a Bachelor's degree or equivalent degree in business administration and does not meet the terms of the labor certification whether considered for a preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional or as a skilled worker under 203(b)(3)(i) of the Act.

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

**ORDER:** The appeal is dismissed.