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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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Services



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FILE:



Office: NEBRASKA SERVICE CENTER

Date: AUG 10 2009

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IN RE:

Petitioner:



Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

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 (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 computer consulting company. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, a Form ETA 750, 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 failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

The record shows that the appeal is properly filed and 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.

As set forth in the director's December 28, 2006 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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 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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup> On appeal, counsel submits a brief and an educational evaluation of the beneficiary's qualifications from Morningside Evaluations and Consulting dated March 9, 2007. Relevant evidence in the record includes an educational evaluation of the beneficiary's qualifications from Morningside Evaluations and Consulting dated December 16, 2004; the beneficiary's secondary school transcripts; the beneficiary's resume; certificates and transcripts relating to computer courses completed by the beneficiary; and correspondence regarding the beneficiary's work experience.

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<sup>1</sup> 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).

On appeal, counsel asserts that the beneficiary has a foreign equivalent degree, and that the director's denial of the petition without considering the beneficiary's work experience was an abuse of discretion. Counsel asserts that the professional category does not require a degree and that the denial is inconsistent with U.S. Citizenship and Immigration Services (USCIS) precedent. Counsel further asserts that the beneficiary qualifies in the professional category based solely on his education, consisting of a three-year degree program and an additional one and one-half years of post-graduate education.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on May 19, 2003.<sup>2</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on December 15, 2006.

The job qualifications for the certified position of programmer analyst are found on Form ETA-750 Part A. Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education (number of years)

|                         |                        |
|-------------------------|------------------------|
| Grade school            | 8                      |
| High school             | 4                      |
| College                 | 4                      |
| College Degree Required | Computer Science or    |
| Major Field of Study    | related Business Field |

Experience:

|                    |       |
|--------------------|-------|
| Job Offered        | 3     |
| (or)               |       |
| Related Occupation | blank |

Block 15:

Other Special Requirements 2 years experience with MOVEX ERP software.

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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 is clear.

As set forth above, the proffered position requires four years of college culminating in a degree in computer science or a related business field and three years of experience in the job offered.

In support of the beneficiary's educational qualifications, the petitioner submitted a credentials evaluation dated December 16, 2004, from Morningside Evaluations and Consulting indicating that the beneficiary was awarded a bachelor's degree in commerce from the University of Bombay in India in 1994. The evaluation equated the beneficiary's education at the University of Bombay to three years of academic coursework towards a degree from an accredited institution of higher education in the United States. The evaluation further equated the beneficiary's education plus his more than nine years of work experience to a Bachelor of Science degree in Computer Information Systems.<sup>3</sup>

The director denied the petition on December 28, 2006. He determined that the beneficiary's bachelor of commerce degree from the University of Bombay could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree because the labor certification does not allow for a combination of educational experiences to be determined the equivalent of a baccalaureate degree.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel submitted a credentials evaluation dated March 9, 2007, from Morningside Evaluations and Consulting indicating that the beneficiary was awarded a bachelor's degree in commerce from the University of Bombay in India in 1994 and completed one and one-half years of post-graduate study at the University of Bombay. The evaluation does not indicate that the beneficiary was awarded a post-graduate degree or diploma based on this course of study. Based on his education, the evaluation states that the beneficiary "has attained the equivalent of a Bachelor of Business Administration degree from an accredited institution of higher education in the United States."

The proffered position requires four years of college, a degree in computer science or a related business field and three years of experience in the job offered. DOL assigned the occupational code of 030.162-014,<sup>4</sup> 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/> (accessed June 30, 2009) 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->

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<sup>3</sup> The rule used to equate three years of experience for one year of education applies to H-1B nonimmigrant petitions, not to immigrant petitions. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

<sup>4</sup> This number corresponds to the Dictionary of Occupational Titles (DOT) Code for the position of programmer analyst.

1051.00 (accessed June 30, 2009) 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 the requirements of the proffered position 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.

The above regulation uses 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.

The regulation at 8 C.F.R. 204(5)(l)(3)(ii)(B) states the following:

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.

The above regulation requires that the alien meet the requirements of the labor certification.

Because the petition's proffered position qualifies for consideration under both the professional and skilled worker categories, the AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional category.

Initially, however, we will provide an explanation of the general process of procuring an employment-based immigrant visa and the roles and respective authority of both agencies involved.

As noted above, the Form 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:

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 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 the position and the alien are qualified for a specific immigrant classification. 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).<sup>5</sup> *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.

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

*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).

Therefore, it is DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of USCIS to determine if the petition and the alien beneficiary are eligible for the

classification sought. For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien had a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation 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.)

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).

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 1289m 1295 (5<sup>th</sup> Cir. 1987). It can be presumed that Congress’ narrow requirement in 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 a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require “a” degree that is the foreign equivalent of a U.S. baccalaureate degree, we would not consider education earned at an institution other than a college or university.

The petitioner in this matter initially relied on the beneficiary’s combined education and work experience to reach the “equivalent” of a degree, which is not a bachelor’s degree based on a single degree in the required field listed on the certified labor certification. The petitioner on appeal relies on the beneficiary’s combined three-year bachelor degree and additional one and one-half years of post-graduate study to reach the “equivalent” of a degree, which is not a bachelor’s degree based on a single degree in the required field listed on the certified labor certification.

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 single-source "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.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor's degree.

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that U.S. Citizenship and Immigration Services (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*, 437 F. Supp. 2d at 1179 (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 USCIS, 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. Or. 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 USCIS 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 on the Form ETA 750 and does not include alternatives to a four-year degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS 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, USCIS "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 Form ETA 750 does not specify an equivalency to the requirement of a degree in computer science or a related business field.

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS 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). USCIS'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). USCIS 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.

Further, the employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 14 n. 7. Thus, USCIS agrees that the best evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position is evidence of how it expressed those requirements to DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence is needed to ensure inflation of those requirements is not occurring in an effort to fit the beneficiary's credentials into requirements that do not seem on their face to include what the beneficiary has.

Thus, the AAO issued a request for evidence (RFE) on January 29, 2009, soliciting such evidence. The AAO also requested that the petitioner submit the beneficiary's college degree, post-graduate degrees or diplomas and college and post-graduate school transcripts, and requested that the petitioner explain why the evaluation dated December 16, 2004 from Morningside Evaluations and Consulting did not address the beneficiary's post-graduate education. In response, the petitioner submitted a brief; the beneficiary's transcripts from the University of Bombay; the beneficiary's Bachelor of Commerce degree issued by the University of Bombay on December 2, 1994; the beneficiary's transcripts for post-graduate studies at the University of Bombay; a credentials evaluation dated April 5, 2002, from Josef Silny & Associates, Inc.; certain correspondence between

the petitioner and DOL regarding the labor certification application; the Notice of Job Availability posted by the petitioner for the proffered position; newspaper advertisements for the proffered position; and pages from the petitioner's website.

To determine whether a beneficiary is eligible for a preference immigrant visa, 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. USCIS 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).

The beneficiary set forth his credentials on Form ETA 750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, eliciting information of the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), he represented that he received a Bachelor of Commerce degree from the University of Bombay in India in April 1994, and that he received a diploma in RDBMS from Software Solution Integrated, Ltd. in India in June 1998.

The petitioner submitted three evaluations of the beneficiary's education to show that the beneficiary met the educational requirements of the labor certification. A credentials evaluation dated April 5, 2002, from Josef Silny & Associates, Inc. indicates that the beneficiary's Bachelor of Commerce degree from the University of Bombay is equivalent to the completion of three years of undergraduate study in Business Administration, Accounting and related courses at an accredited institution of higher education in the United States. The evaluation further notes that the beneficiary completed an additional semester in management studies at the University of Bombay. The evaluation determined the additional semester of coursework to be equivalent to one additional semester in Management Studies at a regionally accredited institution of higher education in the United States.

Pursuant to a credentials evaluation dated December 16, 2004, from Morningside Evaluations and Consulting, the beneficiary's education at the University of Bombay equates to three years of academic coursework towards a degree from an accredited institution of higher education in the United States. The evaluation further equates the beneficiary's education plus his more than nine years of work experience to a Bachelor of Science degree in Computer Information Systems.

Further, a credentials evaluation dated March 9, 2007, from Morningside Evaluations and Consulting indicates that the beneficiary was awarded a bachelor's degree in commerce from the University of Bombay and completed one and one-half years of post-graduate study at the University of Bombay. The evaluation does not indicate that the beneficiary was awarded a post-graduate degree or diploma based on this course of study. Based on his education, the evaluation states that

the beneficiary “has attained the equivalent of a Bachelor of Business Administration degree from an accredited institution of higher education in the United States.”

In response to the AAO’s RFE, counsel states that the beneficiary made an honest mistake when he signed the ETA 750B which omitted his post-graduate coursework, and that such an omission is not willful misrepresentation.<sup>6</sup> Counsel further states that the beneficiary failed to inform counsel until 2007 about his additional coursework, although the additional coursework had been completed in 1996. Counsel states that the beneficiary did not understand that documentation of his additional coursework at the University of Bombay was required because it did not result in a diploma or degree certificate. However, the credentials evaluation dated April 5, 2002, from Josef Silny & Associates, Inc., references one semester of the beneficiary’s post-graduate coursework.<sup>7</sup> It is unclear why the evaluation does not reference an additional one and one-half years of post-graduate education obtained in 1995 and 1996. Counsel does not address this inconsistency in response to the RFE. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

The petitioner has not resolved the inconsistencies in the record regarding the beneficiary’s post-graduate education with independent, objective evidence. Regardless, even if we take into account the beneficiary’s one and one-half years of post-graduate education, the petitioner has not established that the beneficiary qualifies for preference visa classification under section 203(b)(3) of the Act.

The Form ETA 750 does not provide that the minimum academic requirements of four years of college culminating in a degree in computer science or a related business field might be met through a combination of post-graduate coursework, work experience or some other formula other than that explicitly stated on the Form ETA 750. The copies of the notices of Internet and newspaper advertisements and recruitment provided with the petitioner’s response to the RFE issued by this office, also fail to advise DOL or any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. The recruitment summary dated May 5, 2003, submitted by the petitioner to DOL indicates that at least two applicants for the proffered position were rejected, in part, because they did not have the required bachelor’s degree. Thus, the alien does not qualify as a skilled worker as he does not meet the terms of the labor certification as explicitly expressed or as extrapolated from the evidence of its intent about those requirements during the labor certification process.

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<sup>6</sup> We note that the beneficiary also omitted the post-graduate coursework on his resume submitted with the instant petition.

<sup>7</sup> Thus, the additional education was relevant to his credentials evaluation in 2002.

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and fails to meet the requirements of the labor certification, and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act.

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

**ORDER:** The appeal is dismissed.