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U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: FEB 04 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)

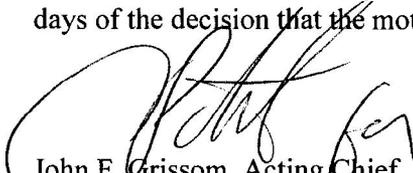
ON BEHALF OF PETITIONER:



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, 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 hospital. It seeks to employ the beneficiary permanently in the United States as a Cerner System Analyst. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition.¹ Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, on September 2, 2006, the director determined that the beneficiary did not possess a science related bachelor of science degree or a foreign equivalent thereof. The petitioner, through counsel, submits additional evidence and asserts that the beneficiary has the required educational credentials and meets the qualifications set forth in the approved labor certification.²

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)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.³

¹ Although an unsigned copy of the ETA Form 9089 accompanied the petition, and could have been a basis for denial, the director did not deny the petition on this issue. He merely observed that if the petitioner wished to appeal the decision, an original labor certification must be provided. As the petitioner submitted the signed original ETA 9089 on appeal, we will accept it for purposes of rendering this decision. *See* 20 C.F.R. § 656.17(a)(1), which requires that the original certified ETA Form 9089 be signed by the employer, alien, attorney and/or agent. The director should have rejected the petition. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

² 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.

³ 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.

A labor certification is an integral part of this petition, but the issuance of an ETA Form 9089 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See* 8 C.F.R. § 103.2(b)(1), (12). *See also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The priority date is the date the ETA Form 9089 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The priority date for the instant petition is June 23, 2006. The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on August 30, 2006.

The director's denial was based on his conclusion that the beneficiary's three-year Bachelor of Science degree from India and a two-year diploma in Medical Laboratory Technology from the Indian Institute of Medical Laboratory Technology was not a foreign equivalent degree as required by the labor certification. Part H, 4 of the labor certification specified a minimum level of education as a Bachelor's degree. Part H, 4-B requires that the major field of study be a "Science Related Bachelor of Science Degree." The director determined that the beneficiary's educational credentials failed to meet the requirements for classification as a professional.

On appeal, the counsel submits additional evidence and contends that the beneficiary's three-year 1982 Bachelor of Science degree from Bangalore University, India and a 1984 diploma from the Indian Institute of Medical Laboratory Technology is the equivalent to a U.S. bachelor of science degree and satisfies the terms of the labor certification. Specifically, counsel relies on the credential evaluations provided to the record and asserts that a combination of foreign degrees and/or diplomas should be viewed as a whole and accepted to meet the bachelor's requirement.

On September 24, 2008, the AAO issued a request for evidence from the petitioner asking for: 1) evidence that the beneficiary's diploma from the Indian Institute of Medical Laboratory Technology could be considered as a post-graduate diploma with an entrance requirement of a three-year bachelor's degree; and 2) copies of evidence of recruitment efforts, including correspondence, postings and advertisements that were submitted to the DOL. This request was made in order to determine the petitioner's intent about the actual minimum requirements of the proffered position and whether the petitioner advertised that it would accept a bachelor's degree based on any equivalency. Further, the request sought evidence that those minimum requirements were clear to potential qualified U.S. workers during the labor market test.

The petitioner was afforded twelve weeks to respond to the AAO's request for evidence. As of this date, it has failed to provide a response. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

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

As noted above, the ETA Form 9089 in this matter is certified by the DOL. Thus, at the outset, it is useful to discuss the 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.

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, including the 9th Circuit that covers the jurisdiction for this matter.

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).

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).

Qualifications for Job Offered

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

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

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the 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, reached a similar decision in *Black Const. Corp. v. INS*, 746 F.2d 503, 504 (1984).

The Department of Labor (“DOL”) must certify that insufficient domestic workers are available to perform the job and that the alien’s performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien’s entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

We are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005) which found that United States 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.”

A judge in the same district subsequently held that the assertion that DOL certification precludes USCIS from considering whether the alien meets the educational requirements specified in the labor certification is wrong. *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 *5 (D. Ore Nov. 30, 2006). In that case, the labor certification application, specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The *Snapnames.com, Inc* court concluded that that ‘B.S. or foreign equivalent’ relates solely to the alien’s educational background and precludes consideration of the alien’s combined education and work experience. *Snapnames.com, Inc.* at *14. However, in the context of a skilled worker classification, deference may be given to an employer’s intent because the court termed the word ‘equivalent’ to be ambiguous. *Id.* at *14. If the classification sought is for a professional or advanced degree professional, the court found that USCIS properly requested that a single foreign degree is required. *But see 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).⁴

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.

In this matter, at least two circuits, including the Ninth Circuit overseeing the Oregon District Court, has held that USCIS does have the authority and expertise to evaluate whether the alien is qualified for the job. Those Circuit decisions are binding on this office and will be followed in this matter.

In this case, the minimum requirements for the position of a Cerner System Analyst are found on Part H of the ETA Form 9089. As stated above, the proffered position requires a Science related Bachelor of Science Degree and 24 months of experience in the job offered. Part H, Item 8 indicates that the employer will not accept an alternative combination of education and experience. Part H, Item 9 reflects that a foreign educational equivalent is acceptable. Item 14 of Part H reflects specific skills or other requirements as follows:

Proven expertise with programming languages, query languages, database management systems, project management tools, and report generations tools, or an equivalent combination of education and experience. The position requires good analytical and problem solving skills and the ability to interact effectively with other staff members. Experience with Mysis Laboratory Information Systems and Cerner Laboratory and Pharmacy Information Systems.

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is “Bachelor’s,” and referred to his three-year 1982 Bachelor of Science degree from Bangalore University.

⁴ It is noted that both of the courts in *Grace Korean* and *Snapnames.com, Inc.* were examining the ETA 750, an older form of the labor certification application than is involved in the present case. That form did not address the issue of alternate combinations of education and/or experience. The new form, ETA Form 9089, has been revised and now specifically requires the petitioner to address what level of alternate education that the petitioner would accept in the alternative. Here, the petitioner indicated that no alternate combination of education and experience was acceptable and did not attempt to define an acceptable equivalency as the form allows.

As shown on the ETA Form 9089, the DOL assigned the occupational code of 15-1051, computer systems analyst to the certified position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database⁵ most analogous to the certified position of Cerner system analyst, 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."⁶ 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.

Further, the job duties of the beneficiary as set forth on Part H, 11 (addendum) of the ETA Form 9089 include:

Leads team to analyze, design, implement, operate, and support systems for clinical department. Coordinates efforts of project teams, which may include members of the Information Technology Department or representatives from other department. Serves as primary consultant to assure that the information Technology Department is providing excellent customer services to an assigned clinical department or practice. Attends meetings and provides regular reports to executives and senior managers. Ensures that new technology is used appropriately, established technical and quality standards (sic) are followed, solutions are cost effective and the information needs of clients are met. Consults with IT staff and representatives from hospital departments.

Based on both the stated minimum requirements described on the ETA Form 9089, the standardized occupational requirements as set forth above, and the expansive job duties of the certified position, as well as the petitioner's request for classification as a professional reflected within its correspondence and on Part I, a, 1 of the labor certification, in this case, the petition will be considered under the professional category. Even if considered as a skilled worker,

⁵ [http://online.onetcenter.org/link/summary/computer systems analyst](http://online.onetcenter.org/link/summary/computer%20systems%20analyst) (accessed January 16, 2009).

⁶ <http://online.onetcenter.org/link/summary/> (accessed January 16, 2009).

which does not require that an applicant possess a baccalaureate degree, the beneficiary must still meet the terms set forth on the labor certification. 8 C.F.R. § 204.5(l)(3)(B). As the petitioner required a bachelor's degree in this case, the petitioner would still need to demonstrate that the beneficiary has a bachelor's degree. Additionally, in such a case, USCIS will also examine whether the petitioner's intent to accept some other form of an academic equivalency was communicated to the DOL and to other potential applicants. As stated above, the petitioner's failure to respond to the AAO's request for evidence does not allow the AAO to consider the petitioner's recruitment efforts or communications with the DOL and precludes a material line of inquiry. *See* 8 C.F.R. § 103.2(b)(14).

Counsel asserts on appeal that a combination of the beneficiary's three-year, 1982 Indian Bachelor of Science degree in physics, chemistry and biology combined with the beneficiary's two-year diploma in medical laboratory technology is a foreign equivalent degree to a four-year science related U.S. bachelor of science degree. He maintains that a foreign equivalent degree determination is supported by the two credential evaluations submitted to the record.

A World Education Services, Inc. (WES) evaluation, dated August 22, 1997 was submitted to the underlying record. Neither the authorship nor the source material is identified. It lists the beneficiary's degree from Bangalore University and the diploma from the Indian Institute of Medical Laboratory Technology in chart form, as well as a chart of course value in a U.S. educational context, which indicates that the total amount of semester credit hours for both the degree and the diploma are 156 hours.⁷ The academic equivalency is determined to be the equivalent of a bachelor's degree in science (physics, chemistry and biology) and medical technology from a U.S. regionally accredited institution in the United States. The evaluation relies on a combination of education, which the petitioner did not clearly allow for on ETA Form 9089, Part H.

An evaluation, dated November 10, 2006, from the Educational Assessment, Inc. (EAI) signed by [REDACTED], director, and [REDACTED], Evaluation Specialist, was provided on appeal. It is noted that a copy of an additional document provided on appeal was also considered by this evaluation including a copy of a Registry of the American Medical Technologists indicating that the beneficiary is a certified medical technologist. The Registry was issued by the American Medical Technologists Incorporated in the State of New Jersey. It contains no visible date that this certification was awarded. The EAI evaluation report states that based on its assessment of the beneficiary's credentials from Bangalore University and the Institute of Medical Laboratory Technology, as well as the beneficiary's undated U.S. designation as a medical technologist, the beneficiary has attained the equivalent of a Bachelor of Science degree in Medical Technology from an accredited U.S. college or university. The evaluation explains that the holding of a medical technologist license in the U.S. presumes that an equivalence to a U.S. bachelor of science degree has been met.

⁷ The copy of the Medical Laboratory Technology diploma and statement of marks was produced on appeal.

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

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

(Emphasis added.)

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification in an immigrant petition sets forth the requirement that a beneficiary must produce one degree from a college or university that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes. These requirements specifically apply to immigrant petitions and do not permit the equivalencies that may apply to non-immigrant H1B petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5).

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. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," he may not qualify as a professional under section 203(b)(3)(A)(ii) of the Act in the professional classification.

Item 14 of Part H, which asks the employer to list specific skills or other requirements qualified a requirement of "[p]roven expertise with programming languages, query languages, database management systems, project management tools, and report generations tools" with "or an equivalent combination of education and experience," but does not clearly state that it related to a degree as opposed to experience/skills. The petitioner could have included an additional clarification of the employer's stated foreign educational equivalent if the petitioner had elected to specify these requirements.

It is further noted that 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). This decision involved a petition filed under 8 U.S.C. § 1153(a)(3) as amended in 1976. At that time, this section provided:

Visas shall next be made available . . . to qualified immigrants who are members of the professions

The statute at 8 U.S.C. § 1153(b)(3)(A) currently provides:

Visas shall be made available to the following classes of aliens . . . (ii) Professionals. – Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold a baccalaureate.

As set forth above, it is noted that in support of the beneficiary's qualifications, counsel has provided two credential evaluations. Each of their conclusions are based on a combined determination that both the beneficiary's three-year bachelor of science degree and his diploma from the Indian Institute of Medical Laboratory Technology, either together represent a bachelor's degree or with the addition of an undated certificate from the New Jersey American Medial Technologists Inc., represents a bachelor's degree.

As mentioned above, although these documents support that the beneficiary has a foreign combined educational equivalency that appears to be the U.S. equivalent of a bachelor's degree, the evaluations do not indicate that he has one four-year foreign equivalent degree required to be eligible to receive a professional classification in an immigrant petition for third preference classification. Further, as noted the petitioner failed to identify that it would accept a combination of degrees or diplomas on the ETA Form 9089. The petitioner also failed to respond the AAO's request for evidence to document that it expressed its intent to accept less than a four-year bachelor's to any potential qualified U.S. applicants.

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). 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 petition's beneficiary must demonstrate to be found qualified for the position. *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.

In this case, the conclusions indicated by the credential evaluations are not probative of the beneficiary’s eligibility for approval in the professional visa category. The WES evaluation is not signed and does not indicate how it reached any of the determinations it made about either of the beneficiary’s credentials or named a specific source for its conclusions. The AEI evaluation supports the WES evaluation but bases its own conclusions on an additional U.S. licensing credential, which is not dated. The AEI presumptions of how a medical technologist certification is obtained in New Jersey or the U.S. may be valid, but no first-hand documentation has been produced to support this hypothesis. Moreover, an undated credential is not probative of whether the beneficiary attained the necessary education as of the priority date, which as noted above is June 23, 2006. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). USCIS 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, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Neither evaluation supports the conclusion that the beneficiary has one degree determined to be the foreign equivalent of a U.S. bachelor’s degree as required by the certified ETA Form 9089.

Even if considered under the skilled worker classification, the petitioner failed to respond to the AAO’s request for evidence relating to its recruitment efforts and communications with the DOL. Therefore, this office was precluded from any review of how the petitioner’s intent may have been manifested to otherwise qualified U.S. workers in that a bachelor’s degree could be met by a defined combination of lesser degrees or diplomas. Further, as mentioned above, the petitioner failed to provide any first-hand evidence that a three-year bachelor’s degree was a prerequisite for admission to the diploma program at the Indian Institute of Medical Laboratory Technology.⁸

⁸ With reference to the beneficiary’s credentials, and as noted in the AAO’s request for evidence, it was stated that we had reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.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://aacraoedge.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” The difference between

Moreover, within the context of a skilled worker classification, the ETA Form 9089 does not provide that the minimum academic requirements of a science related bachelor of science degree might be met through some other defined equivalency.

In this matter, 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. Based on the foregoing, the petitioner failed to demonstrate that the beneficiary met the qualifications of the labor certification. 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.

Beyond the decision of the director, it is noted that the ETA Form 9089, Part H-6, requires that the beneficiary have 24 months of experience in the job offered, which is a Cerner System Analyst. Part J-21 also asks the petitioner if the alien gained any of the qualifying experience with the employer in a position substantially comparable to the job opportunity requested. The petitioner answered "no" to this question. The record contains a letter from the petitioner verifying the beneficiary's employment as a Cerner Systems Analyst with it since May 2002. No other employment verification letter is contained in the record. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) requires verification of qualifying experience to be established by letters from the relevant trainers or employers. The petitioner's letter may not be accepted for this purpose. As no other employment letter certifying that the beneficiary acquired the requisite experience and the proven expertise in the skills described in Part H-14 of the ETA Form 9089, the petition is not eligible for approval.

post-secondary diplomas and the different "post-graduate" diplomas was referenced in The "Advice to Author Notes," relating to Indian diplomas."

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

The AAO's request for evidence also instructed the petitioner to provide evidence that the beneficiary's diploma from the Indian Institute of Medical Laboratory Technology represented a program approved by the AICTE. The petitioner failed to respond.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.