

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B6

FILE:

SRC 08 005 52404

Office: TEXAS SERVICE CENTER

Date: FEB 05 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.


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a marine supplies and service company. It seeks to employ the beneficiary permanently in the United States as a purchasing coordinator. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director also determined that the beneficiary does not qualify for classification as a professional because he has not provided evidence of a baccalaureate degree. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's July 29, 2008 denial, the two issues in this case are whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence, and whether or not the petitioner has demonstrated that the beneficiary holds the foreign equivalent of a United States baccalaureate degree.

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

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

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

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. See 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the

qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on February 25, 2004. The proffered wage as stated on the Form ETA 750 is \$3,244.00 per month (\$38,928.00 per year).

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.¹ On appeal, counsel submits a brief; a letter dated September 16, 2008 from the petitioner to United States Citizenship and Immigration Services (USCIS) indicating that the petitioner is withdrawing its Form I-140 petition on behalf of [REDACTED] IRS Forms W-2 issued by the petitioner to [REDACTED] for 2004, 2005 and 2006; the petitioner's IRS Forms W-3 for 2004, 2005, 2006 and 2007; and the petitioner's bank statements for 2004, 2005, 2006 and 2007. Other relevant evidence in the record includes the petitioner's IRS Forms 1120S, U.S. Income Tax Returns for an S Corporation, for 2004, 2005, 2006; the beneficiary's IRS Forms W-2 issued by the petitioner for 2003, 2004, 2005 and 2006; evidence regarding the prevailing wage for the proffered position; personal tax returns of the petitioner's majority shareholder for 2004, 2005 and 2006; IRS Forms W-2 issued by the petitioner to its employees in 2007; IRS Form 1120S for [REDACTED] for 2005 and 2006; and IRS Form 1120S for [REDACTED] for 2006. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation. On the petition, the petitioner claimed to have been established on February 12, 1994 and to currently employ 15 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on January 14, 2004, the beneficiary claimed to have worked for the petitioner as a purchasing coordinator from December 2002 to the date he signed the Form ETA 750B.

On appeal, counsel asserts that the petitioner has shown the ability to pay proffered wages for all potential beneficiaries. Counsel asserts that it has withdrawn the Form I-140 petition on behalf of [REDACTED] leaving two additional pending petitions, one with a 2004 priority date on behalf of [REDACTED] and one with a 2007 priority date on behalf of [REDACTED]. Therefore, for 2004, counsel asserts that the petitioner has sufficient net income to pay the proffered wages of the

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

instant beneficiary and the beneficiary of its other pending petition with a 2004 priority date. For 2005, counsel asserts that the petitioner's business in New Orleans was severely disrupted by Hurricane Katrina, and that this was an uncharacteristic disruption in business. Counsel also asserts that the petitioner had sufficient bank deposits to pay the proffered wages for the two beneficiaries.² Counsel also notes that the petitioner's majority shareholder provided his personal tax returns and tax returns for two other companies owned by him to support the petitioner's ability to pay the proffered wage.³ For 2006, counsel asserts that the petitioner has sufficient net income to pay the proffered wages of the instant beneficiary and the beneficiary of its other pending petition with a 2004 priority date. Counsel also notes the petitioner's history, substantial gross income and wages paid, and asserts that based on the totality of the circumstances, the petitioner has established its ability to pay the proffered wage.⁴

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in

² Counsel's reliance on the balances in the petitioner's bank account is misplaced. First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax returns, such as the petitioner's taxable income (income minus deductions) or the cash specified on Schedule L that will be considered in determining the petitioner's net current assets.

³ Because a corporation is a separate and distinct legal entity from its owners and shareholders, the assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. See *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). In a similar case, the court in *Sitar v. Ashcroft*, 2003 WL 22203713 (D.Mass. Sept. 18, 2003) stated, "nothing in the governing regulation, 8 C.F.R. § 204.5, permits [USCIS] to consider the financial resources of individuals or entities who have no legal obligation to pay the wage."

⁴ In his brief, counsel requests that USCIS prorate the proffered wage for the portion of the year that occurred after the priority date. We will not, however, consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. While USCIS will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income statements or pay stubs, the petitioner has not submitted such evidence.

evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). *See also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, USCIS requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonogawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the beneficiary's IRS Forms W-2 for 2004, 2005 and 2006 show compensation received from the petitioner, as shown in the table below.

- In 2004, the Form W-2 stated compensation of \$24,000.00.
- In 2005, the Form W-2 stated compensation of \$18,300.00.
- In 2006, the Form W-2 stated compensation of \$24,000.00.

Therefore, for the years 2004, 2005 and 2006, the petitioner has not established that it employed and paid the beneficiary the full proffered wage, but it did establish that it paid partial wages each year. Since the proffered wage is \$38,928.00 per year, the petitioner must establish that it can pay the difference between the wages actually paid to the beneficiary and the proffered wage, which is \$14,928.00, \$20,628.00 and \$14,928.00 in 2004, 2005 and 2006, respectively.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, USCIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross receipts and wage expense is misplaced. Showing that the petitioner's gross receipts exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that USCIS should have considered income before expenses were paid rather than net income. The court in *Chi-Feng Chang* further noted:

Plaintiffs also contend the depreciation amounts on the 1985 and 1986 returns are non-cash deductions. Plaintiffs thus request that the court *sua sponte* add back to net cash the depreciation expense charged for the year. Plaintiffs cite no legal authority for this proposition. This argument has likewise been presented before and rejected. *See Elatos*, 632 F. Supp. at 1054. [USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support.

(Emphasis in original.) *Chi-Feng Chang* at 537.

The record before the director closed on July 23, 2008 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2007 federal income tax return was due, but the petitioner had requested an extension to file the return. Therefore, the petitioner's income tax return for 2006 was the most recent return available. The petitioner's tax returns demonstrate its net income for 2004, 2005 and 2006, as shown in the table below.

- In 2004, the Form 1120S stated net income⁵ of \$51,124.00.
- In 2005, the Form 1120S stated net income of \$38,627.00.
- In 2006, the Form 1120S stated net income of \$41,788.00.

Therefore, for the years 2004, 2005 and 2006, the petitioner had sufficient net income to pay the difference between the wages actually paid to the beneficiary and the proffered wage.

However, USCIS electronic records show that the petitioner filed two other I-140 petitions which have been pending during the time period relevant to the instant petition. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of

⁵ Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 17e (2004-2005) and line 18 (2006) of Schedule K. *See* Instructions for Form 1120S, at <http://www.irs.gov/pub/irs-pdf/i1120s.pdf> (accessed January 27, 2009) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). Because the petitioner had additional deductions shown on its Schedule K for 2004 and additional income (loss) and deductions shown on its Schedule K for 2005 and 2006, the petitioner's net income is found on Schedule K of its tax returns for 2004, 2005 and 2006.

its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and Form ETA 9089). *See also* 8 C.F.R. § 204.5(g)(2). The other petitions submitted by the petitioner in August 2007⁶ and October 2007 are currently pending with USCIS.

The petition submitted in October 2007 has a priority date of July 1, 2004. The proffered wage in that case is \$44,054.00. The petitioner submitted IRS Forms W-2 indicating that it employed and paid the beneficiary in that case \$25,512.00, \$19,434.00 and \$34,252.00 in 2004, 2005 and 2006, respectively. Therefore, to establish its ability to pay the proffered wages of the beneficiaries of its pending petitions from 2004 through 2006, the petitioner must establish that it can pay the difference between the wages actually paid to that beneficiary and the proffered wage, which is \$18,542.00, \$24,620.00 and \$9,802.00 in 2004, 2005 and 2006, respectively, in addition to the difference between the wages actually paid to the instant beneficiary and the proffered wage. In 2004 and 2006, the petitioner had sufficient net income to cover the differences in wages of the two beneficiaries. In 2005, the sum of the differences in wages of the two beneficiaries, \$45,248.00,⁷ is \$6,621.00 greater than the petitioner's net income that year.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.⁸ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's IRS Form 1120S stated end-of-year net current assets for 2005 of -\$378,437.00. Therefore, for the year 2005, the petitioner did not have sufficient net current assets to pay differences between the wages actually paid to the two beneficiaries and the proffered wages.

⁶ The petition submitted in August 2007 has a priority date of June 7, 2007. The proffered wage in that case is \$43,950.

⁷ In 2005, the difference between the wages actually paid to the instant beneficiary and the proffered wage was \$20,628.00. In 2005, the difference between the wages actually paid to the beneficiary of the petitioner's other pending petition and the proffered wage was \$24,620.00. Combined, the petitioner must establish the ability to pay \$45,248.00 in 2005. The petitioner's net income in 2005 was \$38,627.00, and its net current assets were -\$378,437.00.

⁸ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

Therefore, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiaries of its pending petitions the proffered wages as of the priority date of those petitions through an examination of wages paid to the beneficiaries, or its net income or net current assets.

However, counsel asserts in his brief accompanying the appeal that the petitioner's business was severely disrupted by Hurricane Katrina in 2005. As a result, the wages paid by the petitioner to the beneficiaries were lower in 2005 than in 2004 or 2006. The evidence in the record supports this contention. USCIS may consider the overall magnitude of the petitioner's business activities, including any uncharacteristic losses of the petitioner, in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonogawa*, 12 I&N Dec. 612 (BIA 1967). The petitioning entity in *Sonogawa* had been in business for over 11 years and routinely earned a gross annual income of about \$100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonogawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonogawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets.

In the instant case, the petitioner has been in business since 1994 and employed 18 employees in 2007. Due to the effects of Hurricane Katrina, which caused severe destruction in August 2005 in New Orleans where the petitioner's business is located, the petitioner has established an uncharacteristic disruption in business in 2005. Thus, assessing the totality of the circumstances in the individual case, it is concluded that the evidence submitted establishes that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

The director also determined that the beneficiary does not qualify for classification as a professional because he has not provided evidence of a baccalaureate degree. The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on February 25, 2004.

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of information systems manager. In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | |
|-------------------------|---|
| 14. Education | |
| Grade School | blank |
| High School | blank |
| College | 4 |
| College Degree Required | Bachelor's |
| Major Field of Study | Electrical Eng'g or related or foreign equiv. |

The applicant must also have two years of experience in the job offered.⁹ The duties of the job offered are delineated at Item 13 of the Form ETA 750A. Since this is a public record, the duties will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

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 B.E. in electronics engineering from the University of Bombay, where he attended from June 1977 to July 1980. He does not provide any additional information concerning his education on that form.

The record contains the beneficiary's Bachelor of Engineering degree from the University of Bombay in India dated March 4, 1980; the beneficiary's college transcripts indicating that the beneficiary attended eight semesters (four years) of college, from 1976 through 1979; a letter dated August 15, 2008, from [REDACTED] and Anchor Kutchhi Engineering College (affiliated with the University of Bombay) indicating that the beneficiary completed the four-year, eight-semester degree course leading to a Bachelor of Electronics Engineering degree; and an evaluation dated June 28, 2002 from Global Credential Evaluators, Inc. indicating that the beneficiary's Bachelor of Engineering degree from the University of Bombay is equivalent to a Bachelor of Science in Electronics Engineering awarded by a regionally accredited university in the United States.

On appeal, counsel asserts that the beneficiary's Bachelor of Engineering degree from the University of Bombay is equivalent to a US bachelor's degree in electrical engineering or related field of study, and that the degree program was a four-year program.

To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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, *Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

⁹ The petitioner provided sufficient evidence of the beneficiary's prior two years of employment experience in the job offered pursuant to 8 C.F.R. § 204.5(l)(3).

The regulations define a third preference category professional as a “qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.” *See* 8 C.F.R. § 204.5(1)(2). The regulation at 8 C.F.R. § 204.5(1)(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 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 showing 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. The record indicates that the beneficiary holds a degree that is the foreign equivalent of a United States baccalaureate degree.

In determining whether the beneficiary’s Bachelor of Engineering degree from the University of Bombay is a foreign equivalent degree, we have reviewed the Electronic Database for Global Education (EDGE) created by 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.” <http://www.aacrao.org/about/> (accessed January 27, 2009). 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.” *Id.* 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.” *Id.* EDGE provides a great deal of information about the educational system in India. EDGE asserts that the Bachelor of Engineering degree “represents attainment of a level of education comparable to a bachelor’s degree in the United States.” <http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=134> (accessed January 27, 2009). The beneficiary’s college degree and transcripts clearly indicate that the beneficiary completed the four-year, eight-semester degree course leading to a Bachelor of Electronics Engineering degree. A letter dated August 15, 2008, from Shah and Anchor Kutchhi Engineering College (affiliated with the University of Bombay) confirms that the beneficiary completed the four-year, eight-semester degree course leading to a Bachelor of Electronics Engineering degree. Therefore, the AAO finds that the beneficiary holds an equivalent to a US bachelor’s degree in electrical engineering or related field of study and completed four years of college and thus, meets the educational requirements specifically set forth on the certified 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 met that burden.

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