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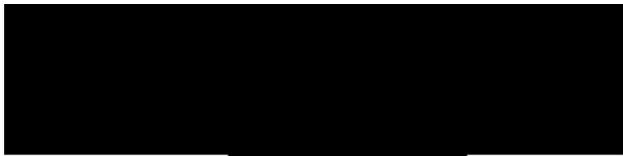
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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Office: NEBRASKA SERVICE CENTER

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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 facilities and technology solutions provider. It seeks to employ the beneficiary permanently in the United States as a senior programmer analyst. 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 beneficiary's credentials did not satisfy the minimum level of education stated on the labor certification and denied the petition accordingly.

On appeal, the petitioner, through counsel, submits additional evidence related to the beneficiary's education.¹ Counsel contends that the beneficiary's educational credentials satisfied the terms of the labor certification and that the petition should be approved.

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

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

¹ Counsel's response to the request for evidence indicates that the I-140 petitioner, styled as "Nova Corp/SVR Group, Inc." actually represents an entity which never existed. Rather it appears to be a fictitious combination of two separate corporations or two employers. As the regulations at 8 C.F.R. § 204.5 do not contemplate combinations of different corporations as co-employers for the purpose of sponsoring a beneficiary, the I-140 should have been rejected. Counsel additionally stated that "Scivantage, Inc." (aka SVR) is the successor-in-interest to "Nova Corp." That issue requires additional information to resolve, but it is noted that it is governed by *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986). A successor-in-interest status requires documentary evidence that the petitioner has assumed all of the rights, duties, and obligations of the predecessor company. The fact that the petitioner is doing business at the same location as the predecessor does not establish that the petitioner is a successor-in-interest. In addition, in order to maintain the original priority date, a successor-in-interest must demonstrate that the predecessor had the ability to pay the proffered wage. *See Id.*

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

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date, the day the ETA 750 was accepted for processing by any office within DOL's employment system. See 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA 750 was accepted for processing on February 21, 2003. The Immigrant Petition for Alien Worker (I-140) was filed on August 24, 2006.

Part A of the ETA 750 sets forth the minimum requirements for the position of senior programmer analyst. It reflects the following:

- 14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in Item 13 above.

Education (Enter number of Years)	Grade School	High School	College
	8	4	4
College Degree Required (specify)	Bachelors in Computer Science, Electronic Engineering or equiv.		
Major Field of Study	(none specified)		
Training	(none specified)		
Experience	Job Offered (none specified)	Related Occupation	Related Occupation (none specified)

15. Other Special Requirements

Visual Basic and OLE DL1 skills utilizing Crystal Reports as server.

Item 13 of the ETA 750A describes the duties of a senior programmer analyst as:

Develop front end VB 4.0 Report Modules and OLE DL1 to generate the functionality of reports. Create various reposts using Crystal Reports, write

stored procedures and develop data uploading programs. Understand & interpret user requirements, create & design documentation & specification, create forms, reports & queries to satisfy user requirements, test & troubleshoot forms & reports and make necessary changes per requests of end users.

In determining whether a beneficiary is eligible for a preference immigrant visa, United States Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. 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).

As stated on the labor certification, the proffered position requires a bachelor's degree in Computer Science, Electronic Engineering or equivalent. DOL assigned the occupational code of 030-162-010 programmer analyst, to the proffered position indicated on the ETA 750A. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/crosswalk/RAPIDS?=15-1021%2C+programmer+analyst&g=Go>² 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 Id.* 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.

More specific to this position, O*NET provides that 73 percent of respondents have a bachelor's degree or higher.³ Further, DOL's Occupation Outlook Handbook, (OOH) available online at

² (Accessed 4/30/09).

³ *See* <http://online.onetcenter.org/link/details/15-1021.00>.

<http://www.bls.gov/oco/ocos110.htm>, provides that employers who use computers for scientific or engineering applications usually prefer college graduates who have degree(s) in computer or information science, mathematics, engineering, or the physical sciences. Employers who use computers in business applications usually prefer to hire people who have had college courses in MIS and business.

Based on the position's job title, job duties, the educational requirements as set forth on the ETA 750A, the SVP identified by DOL, the majority percentage of respondents that have a bachelor's degree or higher, the job in this case would be characterized as a professional position. Additionally, the petitioner, through counsel described the job as a professional position in the response that was provided with the petitioner's response to the AAO's request for evidence.

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

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

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

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

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

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

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

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

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

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

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

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

* * *

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

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

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

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

As contained in the record, the petitioner has provided the following documents related to the beneficiary's education:

- (1) A copy of a diploma and accompanying marks transcripts from the University of Poona indicating that she obtained a three-year Bachelor of Science degree in

physics, statistics, and mathematics. The transcripts indicate that during this course of study, she completed two courses in computer programming.

- (2) A copy of a certificate of merit dated November 25, 1987 from the Jnana Prabodhini's Institute of Management and Leadership Development in Pune, India indicating the beneficiary completed a certificate course in dBase III+ Programming.
- (3) Three copies of certificates from the Datapro computer company indicating that the beneficiary completed a course in Cobol on April 12, 1986; a course in 'C' on September 20, 1988; and a course in autocad in January 1989.
- (4) A copy of a certificate indicating that the beneficiary received a diploma on April 19, 1994 from the Advanced Computing Training School of C-DAC in Pune, India, representing the completion of a computer program that ran from September 1993 to March 1994. This certificate is accompanied by another unsigned, undated document that explains the nature of the Advanced Computer Training School. It states that the candidates who are admitted to the diploma course in advanced computing "should have completed sixteen years of formal education leading to a degree from a recognized University." It also mentions that its ratio of weight given to certain examinations may vary for the modules of operating system concepts, software engineering, and data communication and networking.

As noted above, it is unclear if this undated, unsigned explanation applied to the period that the beneficiary attended the Advanced Computing Training School of C-DAC because the information related to the modules examinations in the explanation only correlates to one of the eight modules identified on the beneficiary's diploma from this school.

- (5) A copy of a diploma from Tilak Maharashtra Vidyapeeth (deemed university) in Pune, India indicating that on December 28, 1992, the beneficiary received an M.A. in Indology based on the passage of an examination in June 1991.⁴

As noted in the AAO's request for evidence, the beneficiary omitted any mention of her master's degree on Part B of the ETA 750.⁵ Moreover, the AAO requested that the master's diploma be a certified copy of the document. A U.S. notary stamp from the state of Florida cannot be accepted as a competent authority to certify that an Indian diploma is an authentic.

The petitioner provided two credentials evaluations. As noted in the request for evidence, an evaluation from [REDACTED] of The Trustforte Corporation claims that the beneficiary's three-year degree from the University of Poona represents the completion of "similar

⁴ This program of study, however, is unrelated to the required field of study of Computer Science or Electronic Engineering on the Form ETA 750.

⁵ See *Matter of Leung*, 16 I&N 12, Interim Dec. 2530 (BIA 1976)(decided on other grounds; Court noted that applicant testimony concerning employment omitted from the labor certification deemed not credible.)

requirements to the completion of three years of academic studies leading to a baccalaureate degree from an accredited institution of higher education in the United States.” The evaluation then considers that the combination of the beneficiary’s certificate from the Jnana Prabodhini’s Institute of Management and Leadership Development, the certificates from the Datapro computer company, and the 1994 diploma from the Advanced Computing Training School of C-DAC to represent “not less than one year of academic studies leading to a baccalaureate degree in Computer Science from an accredited institution of higher education in the United States.” The evaluation subsequently concludes that the beneficiary’s total combination of certificates together with her bachelor of science degree in mathematics, physics and statistics represents the U.S. equivalent of a bachelor of science degree in computer science.

The other academic evaluation was provided by [REDACTED] of the Globe Language Services, Inc. It is dated May 4, 2007. It merely lists the beneficiary’s bachelor of science degree from the University of Poona and the beneficiary’s master’s degree in Indology with admission based on her three-year bachelor’s degree and concludes that the U.S. equivalent is a “Bachelor’s degree in Science and Master’s Degree in South Asian Studies from a regionally accredited educational institution in the United States. This evaluation does not assert that the beneficiary has a bachelor’s degree in the required field of Computer Science or Electronic Engineering.

As noted in the AAO’s request for evidence, both evaluations concur that the beneficiary’s Bachelor of Science degree from the University of Poona represents three years of undergraduate study, however their subsequent conclusions are not based on an examination of similar credentials. The Trustforte evaluation combines the beneficiary’s University of Poona bachelor’s degree with various computer-related certificates/diplomas to make its determination that the beneficiary obtained the U.S. equivalent of a Bachelor of Science in Computer Science and the Globe evaluation uses a different combination and finds that the beneficiary’s unrelated master’s degree and her bachelor of science degree represents the equivalent of two different U.S. degrees, consisting of a Bachelor of Science and a Master’s Degree in South Asian Studies.

The petitioner was asked to explain how each course of study examined by these respective evaluators satisfies the requirements of the ETA 750 requiring four years of college culminating in a “Bachelors in Computer Science, Electronic Engineering or equivalent.” In response, counsel merely states that the omission of the beneficiary’s master’s degree on the ETA 750B was an oversight and that this degree, and presumably the Globe evaluation need not be considered because the combination of the beneficiary’s certificates from the computer institutes and the beneficiary’s bachelor of science are sufficient to meet the terms of the labor certification and approve the petition under the professional visa category.

In the AAO’s request for evidence, the petitioner was advised that the AAO had reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). EDGE indicated that an Indian bachelor of commerce degree was awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a

level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE also advised that Indian postgraduate diplomas, which are awarded after completion of a bachelor's degree 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, EDGE advises to 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 director denied the petition on April 16, 2007, based on his determination that the petitioner had failed to establish that the beneficiary's combination of a three-year bachelor of science degree and combination of certificates from the three entities offering computer training, did not establish that the beneficiary possessed a foreign equivalent degree. Under the professional visa category, the beneficiary must have a single degree that is a foreign equivalent degree to a U.S. baccalaureate degree.

Counsel contends that the beneficiary's credentials fulfilled the terms of the labor certification. Counsel relies on the Trustforte evaluation provided by Mr. Silberzweig in maintaining that the beneficiary satisfies the requirements of the ETA 750 and should be approved as a professional.

The AAO does not disagree that an individual may, as the result of a three-year bachelor of science degree and a valid AICTE approved post-graduate diploma in computer studies, may possess the equivalent of a U.S. bachelor's degree in computer science or electronic engineering. However, we do not conclude that the instant beneficiary, based on a combination of a three-year degree, and lesser certificates or a diploma satisfies the requirements for a visa under the professional category described in section 203(b)(3)(A)(ii) of the Act, because the beneficiary does not have a single foreign equivalent degree. USCIS may, in its discretion, use advisory opinions statements submitted as expert testimony. Where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.*

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under with anything less than a full baccalaureate degree. More specifically, a combination of certificates, degrees and diplomas, 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). Under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(3) of the Act as she does not have the minimum level of education required for a foreign equivalent degree. If a defined

alternate combination of degrees or diplomas was acceptable, then the petitioner could have described this alternative in other provisions of the ETA 750A such as in Item 15 where other special requirements are specified.

As noted above, the position of senior programmer analyst in this case is a professional position as indicated by the job description and educational requirements, the SVP and similarly educated programmer analysts, and by the petitioner's expressed intent as communicated in the response to the request for evidence.

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 [USCIS] "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church* at *8 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since 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). In reaching this decision, the court also concluded that the employer in that case tailored the job requirements to the employee and that DOL would have considered the beneficiary's credentials in evaluating the job requirements listed on the labor certification.⁶

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

Additionally, we also note the subsequent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. Nov. 30, 2006). In that case, the ETA 750 labor certification application specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The district court determined that ‘B.S. or foreign equivalent’ relates solely to the alien’s educational background, precluding consideration of the alien’s combined education and work experience as a “specific level of *educational background*.” *Snapnames.com, Inc.* at *6. Additionally, the court determined that the word ‘equivalent’ in the employer’s educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer’s intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that [USCIS] properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19.

However, in *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) (D.C. Cir. March 26, 2008) the court upheld an interpretation that a “bachelor’s or equivalent” requirement necessitated a single four-year degree in a professional category and additionally noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) required skilled workers to submit evidence that they meet the minimum job requirements of the individual labor certification. In that case, the ETA 750 described the

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

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

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

educational requirement as Bachelor's or equivalent" and that it required a four-year education. The court additionally upheld the USCIS denial in this context as well, where it would have necessitated the combination of the alien's other credentials with his three-year diploma to meet the requirements of the ETA 750. *Id* at *13-14. In this case, the beneficiary must possess a bachelor's degree in one of the specified major fields of study. The petitioner failed to specify any defined equivalency on the ETA Form 750. The beneficiary's formal education does not equate to a single bachelor's degree in electronics and communications, computer science or a related field of study and does not satisfy the requirements of the labor certification in the professional visa category.

As referenced above, the AAO also reviewed the petitioner's response to its request for evidence in the context of whether the petitioner may have communicated a specific intent to accept a combination of lesser degrees or diplomas which are individually less than a four-year U.S. bachelor's degree or its foreign equivalent degree, when it oversaw the labor market test. It is noted that the petitioner provided a copy of its request for a reduction in recruitment. Within this letter to DOL, the copies of two internal postings, and four print advertisements for the proffered position, the petitioner consistently misrepresented the requirements of the job by stipulating that an applicant must have three years of experience, or in other cases, five years of experience. For example, on the internal posting dated from June 22, 2001 to July 12, 2001, the requirements are stated as a bachelor of science degree in computer science or electrical engineering and 5 years of experience when the labor certification required no prior work experience in addition to the bachelor's degree. No equivalency is suggested. Another posting notice dated from August 19, 2002 to August 30, 2002, requires a bachelor of science in computer science, electronic engineering or equivalent, and advises the applicant that he/she must have at least 3 years in the job offered, whereas the labor certification required no prior work experience. Newspaper advertisements dated September 1, 2002, and September 19, 2002, both advise applicants for the certified job as a senior programmer analyst that they must have a minimum of 3 years of experience and a master's degree or equivalent in computer science or related field. These requirements are also different than the stated labor certification requirements of a bachelor's degree and no prior work experience. Further, in reviewing the advertisements, it is noted that the petitioner did not communicate the petitioner's intent to accept a defined alternative equivalency of degrees or diplomas to a bachelor's degree as relevant to the senior programmer analyst position described on the ETA 750. Accordingly, we would not conclude that the petitioner advertised or expressed its intent to potential applicants for the senior programmer analyst position that a stated alternative to a bachelor's degree would be accepted.

It is noted that that as referenced in *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984), USCIS is obliged to "examine the certified job offer *exactly* as it is completed by the prospective employer." (Emphasis added) USCIS' 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).

The beneficiary does not have a single four-year bachelor's degree in computer science or electronic engineering or equivalent and does not meet the terms of the labor certification for a preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional.⁷

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.⁸

ORDER: The appeal is dismissed.

⁷ The petition is also not approvable under a skilled worker category because the petitioner did not identify the minimum requirements for that category as directed by the DOL instructions to Item 14 of the ETA 750 as set forth above, nor did the petitioner's advertisements express its intent that a defined educational equivalency less than a full bachelor's degree would be acceptable. Further, the petitioner would need to credibly establish that the beneficiary's diploma in advanced computing from the Centre for Development of Advanced Computing represented a post-graduate diploma based on admission requirements of a three-year bachelor's degree *at the time that the beneficiary attended*. Here, the unsigned, undated explanation suggesting that it may be from a different period based on the identification of modules relating to examination procedures does not persuasively demonstrate that this credential should be considered a post-graduate diploma. The other certificates submitted did not indicate that they were post-graduate diplomas, rather that they represented a collection of vocational or professional training classes.

⁸ Beyond the decision of the director and as earlier indicated in footnote 1 of this decision, the petitioner, Nova Corp/SVR Group, Inc. represents a fictional combination of two employers, which is not recognized by the regulations. Simultaneously it is claimed that "Scivantage, Inc." (aka SVR) is the successor-in-interest to "Nova Corp." This would require additional information to resolve in order to determine whether the successor-in-interest has assumed all of the rights, duties, and obligations of the predecessor company. *See Matter of Dial Auto Repair Shop, Inc., supra.*