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U.S. Citizenship  
and Immigration  
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER  
WAC 05 136 54671

Date:  
MAR 02 2009

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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:

[REDACTED]

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, California 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 approved labor certification will be invalidated and a finding of fraud and misrepresentation will be entered into the record.

The petitioner is a new home construction (framing) firm. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, a Form ETA 750, Application for Alien Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification.

Specifically, on November 17, 2005, the director determined that the beneficiary did not possess a bachelor's degree or a foreign equivalent degree in accounting. 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.<sup>1</sup>

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 Immigration and Nationality Act (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.<sup>2</sup>

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 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 Form ETA 750 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

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<sup>1</sup> 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.

<sup>2</sup> 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.

petition is April 17, 2002.. The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on April 12, 2005.

The director's denial was based on his conclusion that the beneficiary's associate membership of the Chartered Institute of Management Accountants/CIMA did not constitute a foreign equivalent degree to a four-year U.S. bachelor's degree in accounting and failed to meet the requirements for classification as a professional.

On appeal, counsel submits additional evidence and contends that the beneficiary has the equivalent of a bachelor's degree in accounting as required by the terms of the ETA 750.

On July 23, 2008, the AAO issued a notice of intent to deny to the petitioner, asking for 1) clarification of a letter, dated December 13, 2005, which stated that completion of CIMA's qualification has post graduate status within the UK and is broadly equivalent to a Master's degree. The AAO requested clarification of this letter and the author's position as the beneficiary is also listed as an ACMA Associate and the letter(s) submitted on appeal do not explain whether the ACMA qualification is broadly equivalent to a Master'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 that those minimum requirements were clear to DOL and potential U.S. applicants during the labor market test.

The AAO also advised that based on the beneficiary's relationship to the petitioning company as president,<sup>3</sup> agent for service of process<sup>4</sup> and sole officer as set forth on Schedule E of the petitioner's 2002, 2003, and 2004 federal tax returns (Form 1120), the issue of whether the certified position was open to any qualified United States worker was raised. The AAO advised the petitioner to provide certified copies of the corporation's stock ownership at the time of incorporation to the present to include any and all changes to the corporation's stock ownership, as well as information disclosing whether the beneficiary is related by blood to any of the owners, or through close personal or financial ties.

**In response,** [REDACTED] previously identified as the petitioner's office administrator and who signed the ETA 750, Application for Alien Employment Certification, provided a letter, dated August 18, 2008. She states that the beneficiary's brother, [REDACTED] established the company in May 1998 and that he is the sole shareholder of the petitioning business. A copy of an undated stock transfer ledger is provided, reflecting that on [REDACTED] became owner of two groups of stock of 500 shares and 463 shares, respectively. The year of this ownership is not shown. Documentation of any previous ownership of shares is also not shown as requested by the AAO in its intent to deny. Ms. [REDACTED] continues:

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<sup>3</sup> See [REDACTED] (accessed July 22, 2008).

<sup>4</sup> As advised in its notice of intent to deny, the AAO advised the petitioner that information from the California Business Portal for the State of California shows that the beneficiary is listed as the "Agent for Service of Process" for the petitioning entity. See [REDACTED] All List?Query Number=[REDACTED]&printer=yes (accessed July 22, 2008).

The relationship between the beneficiary and [REDACTED] was not specifically disclosed to DOL because we were not aware that we should neither did the application request it. The department is however aware that [REDACTED] is the owner since the state identity number remains the same even after incorporation, see attachment E.

On Company records, the beneficiary is named as the President and Chief Financial Officer, two positions required for incorporation. The Owner of the Company has been preoccupied with managing the construction activities at the various project sites, so with the beneficiary holding these titles, the office functions (banking, expenditure authorization, contract reviews etc.) can be handled uninterrupted.

[REDACTED] further states that these titles are mostly convenient and that most of the duties are accounting in nature and not outside the beneficiary's current job duties as an "accountant." Documents submitted with this letter include a copy of the petitioner's February 2000 articles of incorporation, signed by the beneficiary as the incorporator and listing him as the agent for service of process. He is also listed on another May 2000 state corporate notice of transaction as the president of the petitioner. Two other copies of payroll records for two different employees are designated as "attachment E" and were meant to specify the state employer identity number as belonging to the petitioning business. A final payroll document indicates that the beneficiary was paid weekly. As noted above, the beneficiary appears on Schedule E of the 2002, 2003 and 2004 of the petitioner's corporate federal tax returns as the petitioner's sole officer, receiving officer compensation (also reported on line 12 of the returns) of \$58,875 in 2002; \$59,375 in 2003; and no officer compensation reported in 2004.

As mentioned above, [REDACTED] signed the application for labor certification on behalf of the petitioning business. Item 16 of Part A of the Form ETA 750 asks for the occupational title of the person who will be the alien's immediate supervisor. The title of the person is specified as the "President."

It is noted that a relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may be "financial, by marriage, or through friendship." See *Matter of Summart* 374, 00-INA-93 (BALCA May 15, 2000).

The regulation at 20 C.F.R. § 656.31(d) provides in pertinent part:

Finding of fraud or willful misrepresentation. If as referenced in Sec. 656.30(d), a court, the DHS or the Department of State determines there was fraud or willful misrepresentation involving a labor certification application, the application will be considered to be invalidated, processing is terminated, a notice of termination and the reason therefore is sent by the Certifying Officer to the employer, attorney/agent as appropriate, and a copy of the notification is sent by the Certifying Officer to the alien and to the Department of Labor's Office of Inspector General.

The regulation at 20 C.F.R. § 656.3 states that employment means: “Permanent full-time work by an employee for an employer other than oneself.”

We find that the facts in this case are analogous to those presented in *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401,406 (Comm. 1986). In that case, the labor certification was signed on behalf of the petitioner by an individual identified as [REDACTED]. After certification and in the course of examining the petitioner’s tax returns, the former Immigration and Naturalization Service (now USCIS) observed that the 1981 tax return showed the beneficiary as the sole officer and a 50% shareholder in the company. The 1982 return reflected that the beneficiary and [REDACTED] were each 50 percent shareholders with officer compensation going to the beneficiary. In light of these facts, the Board of Immigration Appeals (BIA) observed that the beneficiary is not supervised by [REDACTED], who signed the petition as president. Second, the job was not actually open to qualified U.S. Citizen or resident workers. It was concluded that the misrepresentation was both “willful and material.” While it was noted that ownership in a petitioning relationship does not automatically disqualify an alien, the DOL has denied labor certifications where it was determined that the prospective alien employee controlled the prospective corporate employer to the extent that the job offer could not be properly regarded as open to all qualified applicants. *Id.* at 3.

The BIA further noted that the labor application was signed by an individual other than the beneficiary, despite the fact that the petitioner’s corporation income tax return shows that the beneficiary to have been the sole officer of the corporation during that period of time. In the instant matter [REDACTED] signed the application for alien labor certification on April 10, 2002, despite the 2002 corporate tax return showing that the beneficiary was the sole officer of the corporation during that period. The BIA additionally noted that the beneficiary was represented to be subject to the supervision of the president of the petitioning company on the labor certification when he was actually the president of the petitioning corporation. In this case, as noted above, the ETA 750 and other evidence indicates identical facts as reflected on the ETA 750 in that the labor certification basically represented that the beneficiary was going to be supervised by himself as president. In *Matter of Silver Dragon Chinese Restaurant*, the BIA determined that these were material misrepresentations that were willful because the officers and principals of the corporation were presumed to be aware and informed of the organization and staff of the enterprise. *Id.* at 4. As in this case, the BIA concluded that the petitioner’s statement (in this matter, through [REDACTED]) “that the beneficiary would be supervised by its corporate president, when the beneficiary, at the time the statement was made, was in fact the president of the petitioning corporation” can only be held to be a misrepresentation calculated to secure a benefit for which the petitioner was not eligible, and thus a misrepresentation which subjects the labor certification to invalidation.

In this matter, [REDACTED] response that the titles held by the beneficiary were more a matter of convenience than anything else, particularly when they involved contract review, which was a job duty not listed on the labor certification, do not overcome the evidence presented on the labor certification. The beneficiary was represented to be an employee under the supervision of the president, when he was actually the president and sole officer of the petitioning business during the relevant time.

Based on the foregoing and pursuant to 20 C.F.R. § 656.31(d), the labor certification is invalidated based on willful misrepresentation of a material fact.

Even if the labor certification was valid, it cannot be approved because the beneficiary's academic credentials do not satisfy the terms of the labor certification, which provided in Item 14 of Part A of the ETA 750 that an applicant for an accountant should have 4 years of college culminating in a bachelor or foreign equivalent in accounting.

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

As noted above, the ETA 750 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 9<sup>th</sup> 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 1984).

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, CV 04-1849-PK (D. Ore. Nov. 3, 2005), which finds 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 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 sole 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 required that a single foreign degree may be 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).

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, 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. Additionally, it is noted that the AAO's intent to deny also requested copies of the petitioner's recruitment efforts relevant to whether it communicated any intent to the DOL or U.S. applicants with regard to acceptable academic equivalencies consisting of a combination of experience and education.

As shown on the ETA 750, the DOL assigned the occupational code and title of 999-132-011, (accountant and auditor) to the certified position. DOL's occupational codes are assigned based on normalized occupational standards. According to online database, 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."<sup>5</sup> 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 13 of the ETA 750 include analyzing and preparing financial reports and budgets, as well as maintaining accounting policies and procedures and supporting and coordinating auditors.

Based on both the stated minimum requirements described on the ETA 750, the standardized occupational requirements as set forth above, and the managerial nature of the job duties of the certified position, as well as the petitioner's correspondence of March 30, 2005, indicating their opinion that the position is classified as a professional one, the petition will be considered under the professional category. Even if considered as a skilled worker, 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(1)(3)(B). 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.

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<sup>5</sup> <http://online.onetcenter.org/link/summary/> (accessed December 29, 2008)

In this case, the record indicates that the beneficiary attended a Chartered Institute of Management Accountants/CIMA from 1981 to 1985. He subsequently acquired an associate membership status in 1990. A credential evaluation from the Academic Credentials Evaluation Institute, Inc. (ACEI) indicates that the academic coursework was the equivalent of 63 U.S. semester hours, or approximately two years in college or university. This was followed by three years of practice in a responsible position in order to be eligible for the associate membership.

As advised in the AAO's notice of intent to deny, this office has also reviewed the credentials information in 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](http://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."

EDGE indicated that an associate membership (CIMA) was awarded after completing 9 examinations, 3 years of practical work experience in management accounting, basic accounting, or financial management, and passing the Test of Professional Competence in Management Accounting. It is deemed to represent the attainment of a level of education comparable to a bachelor's degree in the United States.

Another evaluation from the International Evaluation Service, characterized the associate membership as "Associate (ACMA)" and referred to the passage of a final professional examination in May 1985, following a four-year program from 1981-1985. It is noted that the AAO did not receive sufficient clarification from the petitioner in response to the notice of intent to deny relevant to an additional letter from CIMA's reference to an equivalence to a Master's degree within the UK and the reference to the beneficiary as an associate (ACMA) in the evaluation from the International Evaluation Service, so those documents will not be considered as relevant to the decision on this issue. 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).

The regulation at 8 C.F.R. § 204.5(i)(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.

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.

Further, as noted in the AAO's notice of intent to deny, as the beneficiary's associateship is based on a combination of education and experience, the credential would not meet the requirements within the regulation at 8 C.F.R. § 204.5(1)(2), which provides that a third preference category professional is 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."

Relevant to qualification under the skilled worker visa category, a beneficiary must meet the petitioner's requirements as stated on the labor certification in accordance with 8 C.F.R. § 204.5(1)(3)(ii)(B), which provides that:

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

The AAO is not persuaded that the beneficiary is eligible for a skilled worker classification. As mentioned above, the record supports a finding that the certified position was requested to be classified as a professional by the petitioner's initial correspondence, the position's requirements of a bachelor's degree and degree of responsibility described in the job duties.

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.

As noted in the ETA 750, although the requirements of the position of accountant do not include any defined alternatives to four years in college culminating in a U.S. bachelor’s degree or foreign equivalent degree, it is the petitioner’s contention that the beneficiary’s credential based on academics and work experience should be included for consideration. The notice of intent to deny requested the petitioner to “obtain evidence of your organization’s intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed” to the DOL and to other U.S. applicants through copies of correspondence, advertisements, notice of posting(s), etc. The petitioner did not provide any of these materials with its response to the notice of intent to deny. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

In this matter, the AAO cannot conclude that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree under either the professional or skilled worker category, and, thus qualifies 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.

Therefore, we cannot conclude that the petitioner’s actual minimum educational requirements included membership in a professional association premised upon a combination of education and experience because the terms of the labor certification do not support such a finding and no corroborative evidence of the petitioner’s intent concerning the actual minimum requirements of the proffered position was submitted.

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).

Moreover, as discussed above, the approved labor certification in these proceedings is invalidated based on willful misrepresentation pursuant to 20 C.F.R. § 656.31(d).

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. The approved labor certification is invalidated.

**FURTHER ORDER:** The AAO finds that the petitioner willfully misrepresented a material fact to fraudulently obtain an immigration benefit.