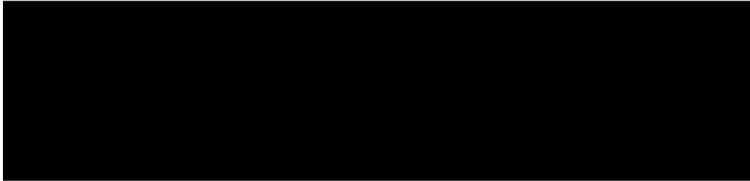


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Services

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FILE: LIN 07 051 54135 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
Beneficiary:



MAR 04 2009

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).

A handwritten signature in black ink, appearing to read "J. Grissom".

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 management consultant and accounting firm. It seeks to employ the beneficiary permanently in the United States as a systems accountant. As required by statute, a Form ETA 750,¹ 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 did not satisfy the minimum level of education stated on the labor certification. Specifically, on January 9, 2007, the director determined that the beneficiary did not possess a four-year bachelor's degree or a foreign equivalent degree in business administration or accounting and failed to qualify for the professional visa category.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the beneficiary has the required educational credentials and meets the qualifications set forth in the approved labor certification.²

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

The petitioner did not specify whether the classification sought is as a professional or as a skilled worker. 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.³

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

¹ After March 28, 2005, the correct form to apply for labor certification is the ETA Form 9089.

² The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

³ A professional occupation is statutorily defined at section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32) as including but not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

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 petition is November 2, 2006. The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on December 11, 2006. Part 5 of the I-140 indicates that the petitioner was established on November 20, 1988 and currently claims three employees.

On appeal, counsel asserts that a three-year foreign bachelor's degree may represent a U.S. bachelor's degree and contends that the USCIS failed to recognize that the beneficiary's Indian three-year Bachelor of Commerce degree either alone or in combination with a final examination certificate from the Institute of Chartered Accountants of India (ICAI) may represent the equivalent of a U.S. bachelor's degree. Counsel questions the denial of the petition because USCIS failed to cite any reliance on an expert credentials evaluation.

On October 29, 2008, the AAO issued a request for evidence from the petitioner asking for copies of evidence of recruitment efforts, including correspondence, postings and advertisements that were submitted to the DOL in order to determine how the petitioner communicated its intent to potential applicants concerning the actual minimum educational requirements of the certified position.

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

As noted above, the Form 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 9th Circuit that covers the jurisdiction for this matter.

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

* * *

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

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of

1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

Qualifications for Job Offered

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

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

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. ***The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.***

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, reached a similar decision in *Black Const. Corp. v. INS*, 746 F.2d 503, 504 (1984).

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

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

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

We are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which found that United States Citizenship and Immigration Services (USCIS) “does not have the authority or expertise to impose its strained definition of ‘B.A. or equivalent’ on that term as set forth in the labor certification.” A judge in the same district subsequently held that the assertion that DOL certification precludes USCIS from considering whether the alien meets the educational requirements specified in the labor certification is wrong. *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 *5 (D. Ore Nov. 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The *Snapnames.com, Inc* court concluded that that ‘B.S. or foreign equivalent’ relates 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). It is noted that in this case, no equivalency was specified or defined on the Form ETA 750.

In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719.

In this matter, at least two circuits, including the Ninth Circuit overseeing the Oregon District Court, have 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.

The instructions for the Form ETA 750A, item 14, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

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

Block 14:

Education (number of years)

Grade school

High school

College

College Degree Required

Bachelor's

Major Field of Study

Business Admin or Accounting

Experience:

Job Offered

1 year in job offered

Block 15:

Other Special Requirements (none stated)

As shown on the Form ETA 750, the DOL assigned the occupational code and title of 160.167-026, systems accountant, to the certified position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database,⁴ and its description of the requirements for the position most analogous to the certified job, 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."⁵ 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.

⁴ <http://online.onetcenter.org/crosswalk/DOT/s=160.167-026&g=GO> (accessed 01/22/09).

⁵ <http://online.onetcenter.org/link/summary/13-2011.01> (accessed 01/22/09).

Based on both the stated minimum requirements described on the ETA 750 and the standardized occupational requirements as set forth above, the position will be considered under both the professional category and the skilled worker category. It is noted that while the skilled worker classification minimum requirements do not require that an applicant possess a baccalaureate degree to be classified as a skilled worker, the beneficiary must still meet the terms set forth on the labor certification. 8 C.F.R. § 204.5(l)(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 DOL and to other potential applicants.

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

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

(Emphasis added.)

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification 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. A bachelor's degree is generally found to be based on four years of education. *See Matter of Shah*, 17 I&N Dec. 244,245 (Comm. 1977).

As the record reflects, the beneficiary possesses a 1982⁶ Bachelor of Commerce degree from the University of Delhi. He also passed the ICAI intermediate examination in November 1983 and passed the final ICAI examination in November 1985, according to the copy of the ICAI Final Examination Certificate dated January 1986.⁷ The petitioner initially provided two credential evaluations to the underlying record. [REDACTED] of The Trustforte Corporation issued an academic evaluation dated October 23, 2001. He determined that the beneficiary's Bachelor of Commerce degree from the University of Delhi represented the completion of three years of undergraduate studies toward a Bachelor of Business Administration degree from an accredited institution of higher education in the United States. Combined with the passage of the ICAI final examination, [REDACTED] concluded that the beneficiary attained the equivalent of a Bachelor

⁶ The degree was issued in 1983.

⁷ The certificate also indicates that it was issued on June 4, 1986.

of Business Administration with a concentration in accounting from an accredited U.S. institution of higher education.

A second Subject Analysis Evaluation Report, dated June 14, 2004, was also provided from the Educational Evaluators, Inc. (ECE). It provided no information as to the author's identity, his or her credentials or sources relied upon. The evaluation was provided in chart form and indicated that the beneficiary's Bachelor of Commerce degree was the U.S. equivalent of the completion of three years of undergraduate studies. It also indicated that the beneficiary's 1986 Certificate of Membership as an Associate in ICAI, represented the U.S. equivalent of a bachelor's degree in business administration with a major in accounting. The summary indicates that the beneficiary has the U.S. equivalent of completion of three years of undergraduate work and a bachelor's degree in business administration with a major in accounting. It is noted that a copy of the beneficiary's Certificate of Membership in the ICAI as an Associate as of January 1986⁸ was not provided until it submitted its response to the AAO's request for evidence.

Counsel, further provided two additional evaluations on appeal in support of his assertion that the beneficiary's three-year Bachelor of Commerce degree, alone, is equivalent to a four-year U.S. bachelor's degree in business administration or accounting, according to a credential evaluation, dated January 30, 2007 from ██████████⁹ of Career Consulting International (CCI), and an educational evaluation dated January 29, 2007 from ██████████¹⁰ of Marquess Educational Consultants (MEC).

Both ██████████ and ██████████ determine that the beneficiary completed 120 credits in his Bachelor of Commerce degree from the University of Delhi, which would be the normal course requirement for a U.S. bachelor's degree. It is not clear that a "contact hour" would be the same or directly equivalent to a U.S. "credit hour." In the Indian system, students spend more time in the classroom providing more "contact hours," whereas the U.S. system calculates time spent studying outside the classroom into the credit hour determination.¹¹ The measures are based on two separate calculations and therefore cannot be considered as equivalent, or interchangeable. ██████████

⁸ The date of issue is stated as February 28, 1986.

⁹ ██████████ indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure Robert de Sorbon but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr/index1.html, Ecole Superieure Robert de Sorbon awards degrees based on past experience.

¹⁰ ██████████ indicates that he has a "canonical diploma of Sacrae Theologiae Professor" from St. David's Oecumenical Institute of Divinity, which he equates to a Doctorate of Divinity.

¹¹ U.S. students "are assumed to spend two hours of outside preparation for every 1 hour of lecture." The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise," (<http://www.handouts.aaccrao.org/am07/finished/F034p-M-Donahue.pdf> (accessed September 8, 2008)). As the Indian system is not based on credits, but is exam based, transfer credits are based on a calculation of the number of exams taken multiplied to reach "a base line of 30" for credit conversion as the systems do not readily equate. *Id.*

reaches this conclusion by assigning ten credits to each course that the beneficiary took in his Bachelor of Commerce degree program.¹² While she explains that her “process” includes using “unit credits” or “clock hours of instruction” from records to determine the number of credits, the beneficiary’s transcript in the record does not include either figure.

Moreover, the [REDACTED] evaluation refers to accelerated programs in the United States that permit a bachelor’s degree to be completed in three years, not four, thus showing that a U.S. bachelor’s program does not necessarily demand a four-year program. The AAO notes that programs that allow students to work at an accelerated pace do not establish that a typical three-year Indian degree is equivalent to a four-year baccalaureate U.S. degree or even an accelerated U.S. program.¹³

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). Because these individual evaluations alternately place reliance on different elements of the beneficiary’s credentials, they are not considered probative of the beneficiary’s academic credentials. As advised in the AAO’s request for evidence, we have reviewed the EDGE database created by the AACRAO, (American Association of Collegiate Registrars and Admissions Officers) that sponsors an Electronic Database for Global Education (EDGE). According to its website, www.aacrao.org, it 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://accraoedge.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at www.aacrao.org.

¹² [REDACTED] failed to explain the basis of how she assigned 10 credits to each course that the beneficiary took in his Bachelor of Commerce program at the University of Delhi, nor did she provide any evidence to support her method of assigning credit.

¹³ [REDACTED] also relies on the court in *Snapnames.Com, Inc., v. Chertoff*, in his opinion that the beneficiary’s three-year foreign degree is equivalent to a four-year U.S. degree. As noted above, the court determined that USCIS was entitled to deference in determining whether an applicant’s academic qualifications were sufficient to approve a petition under the professional and advanced degree professional categories. *Id.* at *10-11.

Aacrao.org/publications/guide to creating international publications.pdf. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

As noted in the request for evidence, EDGE determines that an Indian bachelor of commerce degree represents no more than the attainment of a level of education comparable to two to three years of university study in the United States. Although EDGE confirms that ICAI associate membership awarded upon the passage of the ICAI final examination represents the attainment of a level of education comparable to a U.S. bachelor's degree in accounting, the professional regulation requires a degree to be evidenced in the form of an official college or university record. ICAI is not an academic institution that can confer an actual degree with an official college or university record. Additionally, it does not represent a single source foreign equivalent degree, but is based on a combination of educational programs and passage of examinations.

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

The beneficiary is also not eligible for qualification as a skilled worker under section 203(b)(3)(A)(i) of the Act. For this qualification, a beneficiary must meet the petitioner's requirements as stated on the labor certification in accordance with 8 C.F.R. § 204.5(l)(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.

In this case, even considering the petition under the skilled worker category, the beneficiary would not meet the requirements set forth on the ETA 750. The petitioner specified that the academic requirements of the labor certification require a bachelor's degree in business administration or accounting. An equivalency is not specified or defined on the ETA 750.

As noted in the AAO's request for evidence, in order to determine whether the petitioner's express intent regarding the minimum educational requirements set forth on the ETA 750 was communicated to potential applicants, the petitioner was requested to provide documentation of the petitioner's recruitment efforts. The documentation submitted in response included a letter, dated April 7, 2004 from the petitioner to the New Jersey Department of Labor. The petitioner indicated that the position's requirements were a bachelor's degree in business administration or

accounting and one year of experience performing the duties indicated. A copy of a subsequent internal posting of the job and a copy of an online advertisement also reflected the minimum academic credentials as a bachelor's degree in business administration or accounting as indicated on the ETA 750. Copies of three newspaper advertisements omitted any educational requirement or work experience requirement. This evidence does not establish that the petitioner communicated any intent to potential applicants that a defined equivalency in lieu of a bachelor's degree in business administration or accounting would be acceptable. Further, the newspaper ads submitted to alert potential U.S. applicants to the position's actual minimum requirements as the petitioner failed to list either the educational or work experience requirement. Moreover, the Form ETA 750 does not provide that the minimum academic requirements of a bachelor's in business administration or accounting might be met through a specified combination of academic credentials or other defined equivalency.

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*, 596 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 beneficiary must demonstrate to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In this matter, the beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act. Further, the beneficiary does not meet the job requirements as stated on the labor certification, as also would be required for the petition's approval under the skilled worker category pursuant to section 203(b)(3) of the Act.

Based on the foregoing, the petitioner failed to demonstrate that the beneficiary met the qualifications of the labor certification. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

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Page 13

ORDER: The appeal is dismissed.