

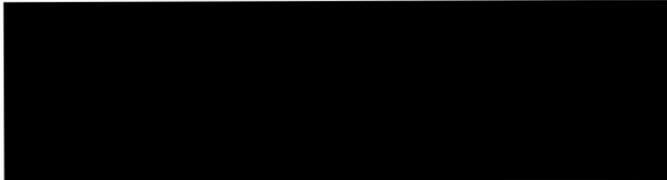
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U.S. Department of Homeland Security
20 Massachusetts Ave., N.W., Rm. 3000
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U.S. Citizenship
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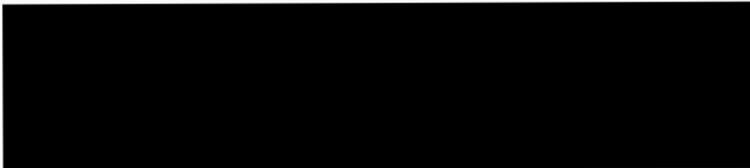
IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

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

The petitioner is a horse breeding farm. It seeks to employ the beneficiary permanently in the United States as a farm and property manager. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position because the beneficiary did not possess a bachelor's degree in agriculture or animal science, and the petitioner made no stipulation in the ETA Form 9089 that experience might be substituted in whole or in part for the required formal education. The director denied the petition accordingly.

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

As set forth in the director's March 2, 2007 denial, the single issue in the current petition is whether the beneficiary is qualified for the proffered position. While the petitioner has established that the position could be classified as a skilled worker position and that the beneficiary qualifies as a skilled worker, the petitioner has not established that the beneficiary meets the clear and unambiguous job requirements on the ETA Form 9089, a baccalaureate with no combination of education and experience acceptable in the alternative. Significantly, the petitioner's claim that the failure to indicate an acceptable alternative is a "clerical error" is not helpful to the petitioner because the petitioner has not demonstrated that U.S. Citizenship and Immigration Services (USCIS) has the authority to correct a clerical error on a document certified by DOL. We emphasize that this case involves an explicit response on the labor certification that an alternative to a baccalaureate is not acceptable. Finally, the petitioner did not respond to our request for objective evidence to resolve the inconsistencies between the various evaluations of the beneficiary's academic credentials.

Section 203(b)(3)(A)(i) of the Act 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. While no degree is required for this classification, the regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification must be accompanied by evidence that the beneficiary "meets the education, training or experience, *and any other requirements of the individual labor certification.*" (Emphasis added.) 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.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089 Application for Permanent Employment Certification as certified by DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted on July 7, 2006.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) (“On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule.”); *see also*, *Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO’s de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

On appeal, counsel submits a brief and the following evidence:

A copy of the beneficiary’s Ordinary National Diploma (OND) in Agricultural Subjects issued on July 1, 1978 to the beneficiary from Shuttleworth Agricultural College.²

A copy of the beneficiary’s Curriculum Vitae that indicated his studies at Shuttleworth Agricultural College, Bedfordshire, United Kingdom. This document also indicates that the beneficiary attended Bude Grammar School from 1969 to 1974, taking five General Certificate of Education (GCE) O’level classes including mathematics and English;

A copy of a document entitled “Prizes” that identifies students who have won prizes in various categories, including the OND Course and the Higher National Diploma (HND) Course, and animal husbandry prizes. The beneficiary is listed as having won prizes as best student in the OND course for the subjects of Farm Management, Animal Husbandry, Crop Husbandry, Farm Mechanization, and also as having won the Dalgety Agriculture Ltd. Crop Husbandry prize. The beneficiary is also listed as having been recognized as the top student in the OND course, winning the Shirley Cup.

A copy of an academic evaluation report prepared by [REDACTED] Park Evaluations & Translations, New York, New York, dated April 25, 2007. Dr. [REDACTED] identifies himself as the senior evaluator of Park Evaluations, and a member of the American Association of College Registrars and Admissions Officers (AACRAO). In his evaluation, [REDACTED] describes Shuttleworth Agricultural College as an accredited institution of higher learning in England, and notes that in 1978, the beneficiary was awarded an OND. Dr. [REDACTED] further asserts that the beneficiary completed coursework in general studies and in his area of concentration, General Agriculture, leading to a “degree” from the University. Dr. [REDACTED] states that general studies include coursework in English, mathematics, the sciences, and the social sciences, which are requisite components of a university degree

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

² The beneficiary’s Higher National Diploma in Agricultural Subjects was initially submitted with the I-140 petition. The AAO notes that the date on this document is illegible.

from an institution of higher education in the United States. Dr. [REDACTED] states that the courses completed by the beneficiary and the number of credit hours earned by the beneficiary indicate that the beneficiary satisfied requirements equivalent to those required for the completion of two years of academic studies leading to a university degree from a U.S. educational institution. Dr. [REDACTED] then states that the beneficiary then enrolled in the university level program at Shuttleworth Agricultural College, and completed coursework and examinations in 1980 and received an HND. Dr. [REDACTED] states that the beneficiary's HND is evidence that the beneficiary completed the two-year course of studies required for candidates of the HND. Dr. [REDACTED] states that on the basis of the credibility of Shuttleworth Agricultural College, the number of years of coursework, the nature of the coursework, the grades earned in the coursework, and the hours of academic coursework, the beneficiary has attained the equivalent of a bachelor of science in agriculture from an accredited U.S. institution of higher education.

A copy of a document entitled "Evaluation of Education" prepared by [REDACTED] Express Evaluations, Inc., dated April 19, 2007.³ In his report, [REDACTED] states that the beneficiary obtained both an OND in Agricultural Subjects and an HND in Agricultural Subjects, and that Shuttleworth Agricultural College requires coursework significantly comparable to the required coursework leading to a bachelor's degree from a U.S. accredited institution of higher learning.

The new evaluations submitted on appeal, however, contradict earlier evaluations in the record. Specifically, the record also contains the following evidence either submitted with the initial I-140 petition or in response to the director's request for further evidence (RFE):

A letter of equivalency written by [REDACTED] Arable Research Centres. [REDACTED] describes the beneficiary's academic studies as completed at Shuttleworth College in Bedfordshire where he obtained an HND in agriculture. Dr. [REDACTED] then states the beneficiary left Shuttleworth for his first management post, and adds that "it is interesting that now students can remain at college for as little as one year to convert an HND to a Degree." Dr. [REDACTED] then examines the beneficiary's further professional qualifications in the field of Agriculture.

A letter written by [REDACTED] [REDACTED] Norfolk, England dated April 11, 2000. Mr. [REDACTED] states that by successfully completing the professional United Kingdom (UK) Ministry of Agriculture qualification in Cereals, Peas, Beans and Linseed Inspections, and the UK Basic Qualification, the beneficiary was "qualified to at least equivalent degree status." Mr. [REDACTED] added that he had no hesitation in confirming the beneficiary's degree equivalency based on the beneficiary's completion of the Professional Agricultural Training Board Examiners Course and his vast experience in large estate management.

³ The document does not indicate the location of Express Evaluations, Inc. [REDACTED] identifies himself as an Associate Professor of Microbiology/Immunology and Genetics, Dartmouth Medical School.

An undated letter written by [REDACTED], ADAS Gleadthorpe Research Centre, Nottingham, England. Dr. [REDACTED] stated that in his professional opinion, the beneficiary had acquired a level of skill, knowledge and proficiency that gave the beneficiary at least the equivalent of what he would have gained from a Bachelor of Science degree in agriculture or estate management in the United Kingdom. Dr. [REDACTED] added that the beneficiary's achievements in the agricultural community were well beyond those achieved by many holders of bachelor's degrees or Master of Science degrees in the United Kingdom. Dr. [REDACTED] stated that the beneficiary had at least six years of management experience for each year of college-level training that he lacked, and that his employment experience equated to at least the functional equivalent of a Bachelor of Science degree.

A document entitled "Expert Opinion Evaluation of Academics and Work Experience." This document is dated January 4, 2007, and written by [REDACTED] of the Department of Agricultural, Environment, and Development Economics at The Ohio State University. Dr. [REDACTED] stated that the beneficiary had at least two years of study at Shuttleworth Agricultural College, finishing in 1980, and had at least twenty-four years of qualifying experience and training in agriculture. In his evaluation, [REDACTED] stated that the coursework required by Shuttleworth Agricultural College's HND program is substantially similar to the required coursework leading to an Associate's degree from a U.S. accredited institution of higher learning, or *the first two years* of coursework leading to a four-year Bachelor's degree in Agriculture, from an accredited U.S. institution of higher education. Dr. [REDACTED] then equated three years of work experience and specialized knowledge for one year of university-level training, and stated that the beneficiary had completed the time equivalent of at least eight years of university-level academic training in agriculture. Dr. [REDACTED] concluded that based on the credibility of Shuttleworth Agricultural College, the number of years of course work, the nature of the coursework, and considering the beneficiary's years of work experience and professional training, the beneficiary had attained the equivalent of a bachelor's degree in agriculture from an accredited U.S. institution of higher education.

The record also contains letters verifying the beneficiary's work experience in the field of agriculture and farm management from several former employers. The record does not contain any other evidence relevant to the beneficiary's qualifications to perform the duties of the proffered position.

On appeal, counsel states that the petitioner submitted two expert opinion letters that outlined the beneficiary's past educational achievements and professional experience and affirmed that the beneficiary had the equivalent of a U.S. baccalaureate degree. Specifically, counsel asserts that the beneficiary's two diplomas and the five years of comprehensive, formal schooling have been determined to be the equivalent of a bachelor's degree in Agriculture from an accredited U.S. university by two separate educational equivalency evaluators.

On August 12, 2008, the AAO sent an RFE to the petitioner stating that the documentation in the record of proceeding as currently constituted created ambiguity concerning the beneficiary's academic qualifications for the position and whether they meet the stipulated requirements outlined on the ETA Form 9089. The AAO acknowledged counsel's assertion that former counsel filed the labor certification application erroneously and the application should have stated that a combination of work and experience was permitted to show an equivalent to a bachelor's degree.

The AAO also noted that the evaluation reports provided by Park Evaluations and Translations and Express Evaluations, Inc.⁴ contradicted [REDACTED] educational evaluation submitted earlier in these proceedings, while [REDACTED]'s evaluation appears to corroborate comments made by other evaluators or references. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."

In examining the beneficiary's academic qualifications in its RFE, the AAO also noted that no evaluator spoke to whether the beneficiary's academic credentials received from a three-year sandwich course of studies at Shuttleworth Agricultural College would be sufficient to establish an equivalent degree in agriculture from an accredited U.S. institution. The AAO referred to the website of the Wilshire Agricultural College, another agricultural college in the United Kingdom that describes a three-year sandwich course used to obtain a National Diploma as follows: a course "consisting of a [first] and a [third] year based in college with a year's work experience in year [two]. All units which make up the course contain both theoretical and practical elements."⁵ The AAO noted another website that described the earlier years of Shuttleworth Agricultural College and similar institutions, and distinguished university departments with degree courses from agricultural colleges with diploma courses. The writer further describes the Higher National Diploma (HND) and Ordinary National Diplomas (OND). See www.shuttleworth-sca.co.uk/history_2.htm. (Accessed July 14, 2008.)

The AAO further noted that the website for Shuttleworth Agricultural College presently describes a two-year program identified as Edexcel ND Agriculture with compulsory core modules/units in exclusively agricultural coursework. The AAO concluded that the record was not clear what equivalency this present course would have to the three-year sandwich course undertaken by the beneficiary in the 1970s.

The AAO also reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO).⁶ The AAO

⁴ The AAO notes that these two evaluations refer to the beneficiary's ordinary national diploma issued in 1978 and his Higher National Diploma issued in 1980, while [REDACTED] evaluation does not refer to both documents.

⁵ See www.wiltscoll.ac.uk/ftcourses/detail.Asp?ref=435. (Accessed on of July 14, 2008.)

⁶ AACRAO, according to its website, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in

noted that the EDGE website provides an educational ladder for the United Kingdom that indicates a dual path to further education following the taking of General Certificate of Secondary Education (GSCE) or the Vocational Certificate of Secondary Education (VCSE). The EDGE education ladder indicates one path for students who go to the Sixth Form for two years following receipt of the general certificate of education at Advanced Level which equates to 13 years of secondary education. Thus a three-year degree from a university program following a general certificate of education at Advanced Level would be considered the equivalent of a U.S. baccalaureate degree.

The AAO also noted that the other path indicated by the EDGE ladder consisted of students who obtain the British Technical Education Certificates (BTEC). The ladder indicates that students receiving the BTEC National Diploma, (indicated as a two-year program) when combined with the BTEC Higher National Diploma, (also a two-years program) in the same area, achieve a level of education comparable to a bachelor's degree in the United States. The AAO stated that what was not clear from the record is the equivalency of the beneficiary's OND and HND from Shuttleworth Agricultural College or the relation of these degrees to the BTEC National Diploma/Higher National Diploma education path which establishes the equivalent of a U.S. baccalaureate degree.

The AAO acknowledged that the beneficiary finished his education prior to when the current framework of the UK National Curriculum was instituted but concluded that nowhere does EDGE state that a three-year sandwich course in the years prior to the 1988 changes in the National Curriculum would be the equivalent of the BTEC National and Higher National Diplomas. The AAO noted that while the record establishes that the beneficiary attended Shuttleworth Agricultural College for three years, it did not establish that the beneficiary's studies are equivalent to the present-day BTEC Higher National Diploma. Further, the AAO notes that the record did not contain any information as to the beneficiary's secondary or college-level course of study to further corroborate whether his initial studies at Shuttleworth are the equivalent of the present day BTEC Higher National Diploma. Thus, the AAO requested further clarification of the beneficiary's

more than 30 countries." AACRAO, <http://www.aacrao.org/about/> (last accessed July 14, 2008). Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." *Id.* According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. [REDACTED] of International Education Services, "AACRAO EDGE Login," <http://aacraoedge.aacrao.org/index.php> (last accessed March 13, 2008) (copy incorporated into the record of proceeding).

Authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. See "An Author's Guide to Creating AACRAO International Publications" 5-6(First ed. 2005), available for download at www.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.

academic qualifications and their equivalency to the BTEC National and Higher National Diploma system.

The petitioner's response attempts to resolve the inconsistency in the previously submitted evaluations by asserting that they were prepared for different purposes. Specifically, the petitioner asserts that the earlier evaluations were for the nonimmigrant visa that did not require the academic equivalency of a baccalaureate and, therefore, did not consider the beneficiary's HND. Despite the AAO's request for additional clarification as to the equivalency of the OND and HND, the petitioner provides no such evidence. Contrary to the petitioner's assertion in response to the AAO's notice, the 2007 evaluation from [REDACTED] expressly concludes that the beneficiary's HND is equivalent to an associate's degree, not a baccalaureate.

In the evaluations submitted on appeal, [REDACTED] and [REDACTED], both examined the beneficiary's OND and HND and stated that the coursework represented by the two courses of studies were the equivalent of a bachelor's degree in agriculture. However, neither evaluator explained how they arrived at their conclusions with regard to the beneficiary's coursework at Shuttleworth College. Dr. [REDACTED] states that the beneficiary's completed coursework in general studies, including coursework in English, mathematics, the science and social sciences, while [REDACTED] simply noted that based on the quality of the coursework, at Shuttleworth Agricultural College and the number of years, the beneficiary had the equivalent of a baccalaureate degree in Agriculture.

Further, despite the AAO's explicit request, the petitioner did not provide objective evidence of the equivalency, if any, between the current BTEC diploma programs in the United Kingdom and the beneficiary's studies at Shuttleworth Agricultural College. Thus, the record does not resolve whether the combination of both the beneficiary's OND and HND would be the same as the combination of a BTEC National and Higher National diplomas, considered by AACRAO to be the equivalent of a U.S. baccalaureate degree. Thus the petitioner has not submitted objective evidence that might overcome the discrepancies between the earlier evaluations and those submitted on appeal as required by *Matter of Ho*, 19 I&N Dec. at 591-592.

As the petitioner has not established with consistent evidence that the beneficiary has the academic equivalent of a U.S. baccalaureate, despite USCIS affording the petitioner an opportunity to do so, we must now examine whether the beneficiary can meet the job requirements by combining experience and education.

In its cover letter to the instant I-140 petition, the petitioner clearly established that it was filing the instant petition under the employment-based professional classification, and referred to the beneficiary having the equivalent of a bachelor's degree in agriculture from an accredited U.S. university. The petitioner also referred to the beneficiary's combination of his diploma and his more than twenty years of professional experience having been found to be the equivalent of a bachelor's degree in agriculture from an accredited U.S. institution. The AAO did not dispute the earlier finding of an educational equivalency for the beneficiary's H-IB classification based on his studies and his extensive progressively more responsible work experience in the field of agriculture. It did dispute

whether the petitioner has established that the beneficiary has a foreign equivalent degree in agriculture as stipulated by the ETA Form 9089.

The AAO noted that that the proffered position identified on the ETA Form 9089 required a bachelor's degree and four years of experience, and that because of those requirements, the proffered position appeared to be for a professional.

The AAO then reviewed the Department of Labor's *O'Net* database with regard to the proffered position and noted that DOL assigned the occupational code of 45.1011.08, First-Line Supervisor and Managers of Animal Husbandry and Animal Care Workers, to the proffered position. The AAO further noted that DOL's occupational codes are assigned based on normalized occupational standards, and that according to the *O'Net* database at <http://online.onetcenter.org/link/summary/45-1011.08> JobZone (accessed July 11, 2008) and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the proffered position fell within Job Zone Three requiring "medium 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 6-7 to the occupation, which means "Most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Some may require a bachelor's degree." The *O'Net* also states "Previous work-related skill, knowledge, or experience is required for these occupations. For example, an electrician must have completed three or four years of apprenticeship or several years of vocational training, and often must have passed a licensing exam, in order to perform the job. *See id.*

Based on the above description, the AAO noted that while the proffered position could be analyzed as a professional in some instances, it appeared that the majority of positions in this classification could also be analyzed as skilled worker since the stated occupational requirements did not always require a bachelor's degree but a minimum of two to four years of work-related experience. The AAO then stated that even if the AAO were to consider the instant petition as filed as a skilled worker, the petitioner still has to establish that the beneficiary meets the job requirements on the ETA Form 9089 certified by DOL.

Finally the AAO acknowledged counsel's appellate assertion that prior counsel mistakenly filled out the ETA Form 9089 by not providing any alternate minimum educational/work qualifications. The AAO noted that to determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). The AAO noted that the petitioner could have clarified the contents of the ETA Form 9089 with DOL during the processing of the instant ETA Form 9089.

Despite the AAO's insistence that USCIS is bound by the job requirements certified by DOL when those requirements are clear, the AAO requested evidence of the actual recruitment process and whether the petitioner attempted to recruit both U.S. and foreign employees with less than a four-year baccalaureate degree, or with combined educational and work credentials. The AAO then requested that the petitioner provide probative evidence that it provided, *at the time it submitted to DOL its ETA Form 9089 application and attachments*, the requisite "signed, detailed written report" of its reasonable good faith efforts to recruit U.S. workers prior to filing the application for certification. *See* 20 C.F.R. §§ 656.21(b) or (j).⁷ Specifically, the AAO requested a complete copy of the ETA Form 9089 as certified by the DOL including any documentation that both reflects and summarizes the petitioner's organization's recruitment efforts.⁸ CIS must be in receipt of the complete ETA Form 9089 as certified by the DOL, including any attachments that the DOL incorporated into that form, before the petition may be approved. *See* section 203(b)(3)(C) of the Act; *see also* 8 C.F.R. § 204.5(a)(2) (which mandates that the Form I-140 be accompanied by the individual labor certification *as certified by the DOL*) (emphasis added). Finally, the AAO asked that the petitioner provide a copy of all supporting documents summarizing its recruitment efforts, as previously presented to DOL, which might overcome any deficiencies or defects in the record outlined above.

In response to the AAO's RFE, [REDACTED], the petitioner's vice-president, states that the petitioner had been advised that the beneficiary's combination of education and experience qualified for the H-1B visa application and also for the instant petition, based on his having the equivalent of a bachelor's degree, and that the petitioner had so advertised the position. Mr. [REDACTED] states that the previous counsel's error in filling out the ETA Form 9089 for a bachelor's degree without an alternative combination of education and experience was not caught by the petitioner and that it was not what either the petitioner or the beneficiary intended.

submits the following evidence:

A copy of a letter written by [REDACTED], the petitioner's president, dated October 25, 2004, in support of the beneficiary's H-1B non-immigrant petition. This letter describes the beneficiary's combination of education and experience utilized to establish his eligibility for the H-1B classification;

A copy of the petitioner's Recruitment Report and Notice of Filing dated November 30, 2005 and signed by [REDACTED]. The document summarizes the recruitment steps

⁷ Under DOL's regulations, it is the responsibility of USCIS to ensure that the labor market test was *in fact* carried out in accordance with applicable law. *See* 20 C.F.R. § 656.30(d). The submission of the evidence requested therefore may help demonstrate that U.S. workers with only a baccalaureate degree and with the requisite year of work experience in the proffered job or as a computer professional were in fact put on notice that they were eligible to apply for the proffered position, despite the stated requirements of the ETA Form 9089, and that the petitioner did not in fact exclude U.S. workers with qualifications similar to those of the beneficiary from applying for and filling the position.

⁸ For example, advertisements, posting notices, results of recruitment report, correspondence to DOL, etc.

undertaken and the result of the recruitment process. Mr. [REDACTED] noted that there were no inquiries with regard to the proffered position, no hires and no U.S. workers were rejected;

Copies of the petitioner's job advertisements in October 2005 for the proffered position in the *Poughkeepsie Journal* placed in October 2005, and in *The Independent* newspaper, in Hillsdale, New York.; and

Copies of online advertisements placed on CareerBuilder website dated May 30, 2006;

A billing for Broadcast advertising on radio stations in the Albany Market by Clear Channel Broadcasting, Inc.

All the advertising sources identified the requirements for the proffered position of Farm and Property Manager as follows: "A bachelor's degree (or equivalent) in Agriculture or Animal Sciences in required. Four (4) years experience required."

[REDACTED] also submits a copy of a letter written by [REDACTED] dated March 30, 2007 with regard to a Foreign Labor Certification submitted with an I-140 petition for the beneficiary. Mr. [REDACTED] noted that the ETA Form 9089 prepared by his office and filed with the U.S. DOL had a clerical error in Section H. Mr. [REDACTED] stated that this section incorrectly noted that there was not alternate combination of education and experience that was acceptable to the petitioner. Mr. [REDACTED] stated that the petitioner would accept a combination of education and prior work experience in the proffered position, i.e., a bachelor's degree or its equivalent. Mr. [REDACTED] stated that all of the regulatory pre-filing recruitment that the petitioner performed indicated that the petitioner would have accepted a bachelor's degree in the proffered position, or its equivalent.

As stated previously, to determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. at 406. *See also Mandany v. Smith*, 696 F.2d at 1008; *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d at 1.

The ETA Form 9089 submitted with the instant petition, indicates in Section H, Item 4, and 4-B that a bachelor's degree is the minimum educational level with major studies in agriculture or animal science. In Section H, Item 6, the petitioner also indicated that forty-eight months (four years) of work experience in the proffered job was required. In Item 7 through 7-A, the petitioner indicated that an alternate field of study was not acceptable, and in Item 8 through 8-A, indicated that an alternate combination of education and experience was not acceptable. The petitioner did indicate in Section H, Item 9, that a foreign educational equivalent was acceptable. Item 15 of ETA Form 9089 did not state any further special requirements. This information is clear and unambiguous. Moreover,

on Section I, Item 1 the petitioner expressly indicated that the position was a professional occupation.

The beneficiary set forth his credentials on ETA Form 9089 and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. In Section J, Items 11 through 16, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation was a bachelor's degree in agriculture or animal science, and that his education at Shuttleworth Agricultural College in Bedfordshire ended in 1980.

In the instant case, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the ETA Form 9089 which, in this case, includes a bachelor's degree in agriculture or animal science or a foreign equivalent degree in the same field, with forty eight months of relevant work experience prior to the 2006 priority date.⁹ See 8 C.F.R. § 204.5(l) (3)(B). It is noted that a bachelor's degree is generally found to require four years of post-secondary education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, 17 I&N Dec. at 245.

Evaluating the actual credentials held by the beneficiary is provided through credential evaluations submitted into the record of proceeding for this case. It is noted that *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides: “[USCIS] uses an evaluation by a credentials evaluation organization of a person’s foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.”

With regard to the educational equivalency documents submitted to the record, they are still contradictory in their contents. Mr. ██████ states on appeal that ██████, who wrote the initial educational equivalency report for the instant petition in January 2007, considered the beneficiary’s OND and thus concluded that the beneficiary had the equivalent of a U.S. Associates degree. As stated above, however, ██████ evaluated the beneficiary’s HND, stating that this program required graduation from high school and was the equivalent of a U.S. associate’s degree. Mr. ██████ also appears to assert that the earlier evaluators who submitted letters of equivalency also only examined the beneficiary’s OND, when in fact, these earlier evaluators simply evaluated the beneficiary’s education and work experience and did not explicitly limit their analysis to his OND diploma.

Although there is no statutory or regulatory requirement that a “skilled worker” have a U.S. baccalaureate or foreign equivalent degree, such a degree may be required if such a degree is specified as a job requirement on the ETA Form 9089. Specifically, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for “skilled workers,” states the following:

⁹ The AAO acknowledges that the record establishes the beneficiary’s relevant work experience as totaling in excess of the requisite four years of prior work experience. The AAO will not address the beneficiary’s work experience any further in these proceedings.

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.

(Emphasis added).

Thus, the petitioner simply cannot qualify the beneficiary as a skilled worker without proving the beneficiary meets its additional requirement on the ETA Form 9089 of a bachelor's degree in Agriculture or Animal Sciences.

The beneficiary was required to have a bachelor's degree on the ETA Form 9089. The petitioner failed to provide objective evidence clarifying whether the beneficiary's OND and HND are the equivalent of the combined BTEC Higher National and National diplomas in the same field. Thus, the petitioner has not established that the beneficiary possesses a bachelor's degree in Agriculture or Animal Science, the fields stipulated in the ETA Form 9089, or an equivalent combined BTEC Higher National Diploma and National Diploma, both in Agriculture, a combination considered by AACRAO to be the equivalent of a U.S. baccalaureate degree in Agriculture. Thus, the petitioner has not established that the beneficiary has a bachelor's degree in Agriculture, as stipulated on the ETA Form 9089.¹⁰

We acknowledge the assertions that the petitioner's intention was to accept a combination of education and experience and that the failure to indicate this intention on the ETA Form 9089 was a clerical error. Where the language on the ETA Form 9089 is clear, however, USCIS need not examine the petitioner's intent. Specifically, "in interpreting the labor certification, [USCIS] must start with the plain meaning of the petitioner's language, if such exists." *See Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 *6 (Nov. 30, 2006). *See also Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) (D.C. Cir. March 26, 2008). The information on the ETA Form 9089, including the explicit statement that a combination of education and experience would not be acceptable in lieu of a baccalaureate, is clear and unambiguous. Thus, the mere inclusion of the phrase "or equivalent" in the recruitment materials, without further explanation as to what might be equivalent, cannot establish that the job certified by DOL requires anything less than a U.S. baccalaureate or foreign equivalent degree. The petitioner has provided no legal authority, and we know of none, that would allow USCIS to amend or "correct" a "clerical error" on a document certified by DOL.

According to the plain and unambiguous language of the ETA Form 9089, the beneficiary was required to have a bachelor's degree. The petitioner has not established with consistent evidence that the beneficiary's educational credentials, namely, his HND and OND from Shuttleworth

¹⁰ Based on _____ evaluation, the beneficiary has at least an associate's degree, which is not sufficient to meet the requirements of a bachelor's degree, as stipulated on the ETA Form 9089.

University, are equivalent to a U.S. baccalaureate or foreign equivalent degree. Thus, the petitioner has not met its burden.

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.

ORDER: The appeal is dismissed.