

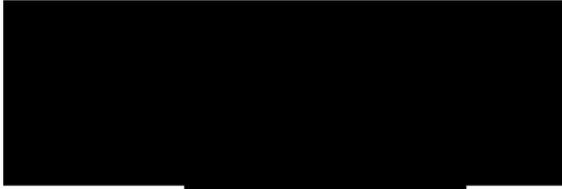
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U.S. Citizenship
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Services

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FILE: [REDACTED]
EAC 06 070 51757

Office: NEBRASKA SERVICE CENTER

Date:
MAR 24 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:



INSTRUCTIONS:

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

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


John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a garment trade and wholesale firm. It seeks to employ the beneficiary permanently in the United States as business development manager. As required by statute, an ETA Form 9089, Application for 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 October 18, 2006, the director determined that the beneficiary did not possess a bachelor's degree or a foreign equivalent degree in textile science or apparel science. 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.¹

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 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.²

In its cover letter dated December 1, 2005, which was submitted with the petition, the petitioner requested that the visa classification sought was for a Professional Worker (EB-3). The petitioner also stated that the beneficiary qualifies as a professional pursuant to 8 C.F.R. § 204.5(l)(2). This regulation defines a professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions."

¹ 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.

² 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. *See also* 8 C.F.R. § 204.5(1)(2).

A labor certification is an integral part of this petition, but the issuance of an ETA Form 9089 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 ETA Form 9089 was accepted for processing by any DOL regional national processing center. *See* 8 C.F.R. § 204.5(d). The priority date for the instant petition is August 4, 2005. The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on January 6, 2006.

The director's denial was based on his conclusion that the beneficiary's three-year Bachelor of Science degree from India and post-graduate diploma was not a foreign equivalent degree to a four-year U.S. bachelor's degree in textile science and failed to meet the requirements for classification as a professional.

On appeal, the counsel submits additional evidence and contends that the beneficiary's three-year Indian bachelor's degree and post-graduate diploma is the equivalent to a U.S. bachelor's degree and satisfies the terms of the labor certification. Specifically, counsel asserts that a combination of foreign degrees is acceptable for classification as a professional. She also states that the Form ETA 9089 does not allow for greater detail than a statement that 'a foreign educational equivalent' is acceptable, and it is not possible for the employer to be more specific on the Form ETA 9089. Therefore, the beneficiary's credentials render him qualified for the certified job offer of business development manager.

On July 17, 2008, the AAO issued a request for evidence from the petitioner asking for evidence that the beneficiary's diploma from the National Institute of Fashion Technology could be considered a post-graduate diploma with an entrance requirement of a three-year bachelor's degree and was an AICTE approved program. The AAO also requested 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 potential qualified candidates during the labor market test. Part H, 14 of the ETA Form 9089 does not specify that the beneficiary can qualify based on any alternate combination of education and experience.

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 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),³ 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,

³ We note that *Grace Korean* was decided based on a labor certification filed in 1996, which would have used a different, prior Form ETA (Form ETA 750). That form did not address the issue of alternate combinations of education and/or experience. The new form, ETA Form 9089, has been revised and now specifically requires the petitioner to address what level of alternate education that the petitioner would accept in the alternative. In this case, the petitioner did not indicate that it would accept any alternate combinations or attempt to define equivalent as the form allows.

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, 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.

In this case, the minimum requirements for the position of business development manager are found on Part H of the ETA Form 9089. Part H, item 4 states that the minimum level of education is a bachelor’s degree. Part H, item 4-B states that the field of study in the degree must be textile science. Item 7 provides for an alternate field of study that may be acceptable. It is identified in 7-A as apparel science. Part H, Item 8 indicates that the employer will not accept an alternative combination of education and experience. Part H, Item 9 reflects that a foreign educational equivalent is acceptable. Experience requirements are described in H-6 as being 24 months in the job offered and H-10 A and B indicate 24 months of experience in an alternate an alternate occupation of business development analyst, merchandiser, or related is also acceptable. Item 14 of Part H reflects specific skills or other requirements as follows:

Must have working knowledge of Hindi (sic) for contract negotiation and coordination with Bangalore office (See #H-13).

In Part J of the ETA Form 9089, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is “Other.” In corroboration of the ETA Form 9089, the petitioner provided a copy the beneficiary’s Bachelor of Science degree and transcript from the University of Pune, India and a copy of a certificate from the National Institute of Fashion Technology, Gandhinagar, India and statement of marks indicating that the beneficiary completed a post-graduate two year diploma program in garment manufacturing technology in 1997-99. This post-graduate program is identified by the petitioner as the reason “Other” was checked in Part J of

the 9089.

As set forth above, in reference to formal education, the proffered position requires a bachelor's degree or foreign educational equivalent in textile science or apparel science.

As shown on the ETA Form 9089, the DOL assigned the occupational code and title of 11-9199.99, (managers, all others) to the certified position. DOL's occupational codes are assigned based on normalized occupational standards. DOL indicates that this code and title do not have individualized data available.

Further, the job duties of the beneficiary as set forth on Part H, 11 of the ETA Form 9089 include:

Develop and implement go-to-market plan based on clients' profiles, coordinating execution with other Departments; Coordinate and supervise Account Manager at Bangalore headquarters to develop products according to US market needs; Supervise market research by Merchandisers in the US office; Participate in industrial exhibitions to identify new vendors/suppliers in India, and new clients/markets in the US; analyze possible alliances with apparel manufacturers and negotiate contracts.

Based on both the stated minimum requirements described on the ETA Form 9089, the standardized occupational requirements as set forth above, and the expansive job duties of the certified position, as well as the petitioner's request for classification as a professional reflected within its correspondence and on Part I, a, 1 of the labor certification, 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 DOL and to U.S. workers in the labor market test.

Counsel asserts that a combination of foreign degrees is acceptable for a professional visa classification. She maintains that a foreign equivalent degree as expressed in the regulation at 8 C.F.R. § 204.5(1)(2) permits various combinations of foreign equivalencies to satisfy the regulatory requirement by omitting any specific definition of a foreign equivalent degree. Counsel additionally cites non-immigrant regulations relevant to certain combinations of experience and education and training that have been specifically permitted in those contexts.

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the

professions. Evidence of a baccalaureate degree shall be in the form 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. These requirements specifically apply to immigrant petitions and do not permit the equivalencies that may apply to non-immigrant H-1B petitions, as asserted by counsel. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5).

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. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," she may not qualify as a professional under section 203(b)(3)(A)(ii) of the Act in the professional classification.

Further the AAO does not concur with counsel's assertion that the ETA Form 9089 does not permit further elaboration of what an employer's "foreign educational equivalent" is considered to be. Item 14 of Part H, which asks the employer to list specific skills or other requirements could have included an additional clarification of the employer's stated foreign educational equivalent if the petitioner had elected to specify these requirements.

It is noted that counsel provided a copy of an USCIS interoffice memorandum, *AFM Update: Chapter 22: Employment-based Petitions (AD03-01)*, (HQPRD70/23.12, dated September 12, 2006), copies of three credential evaluations and a copy of a 2007 AAO decision which approved a petition for classification as a skilled worker based on the evidence in that case relating to the ETA Form 750 labor certification.⁴

The AAO is not bound by such documents. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). USCIS is bound by the Act, agency

⁴ The 2007 AAO decision is further readily distinguishable from the instant matter as the labor certification recruitment in the underlying petition specifically listed Bachelor "or equivalent."

regulations, precedent decision of the agency and published decisions from the circuit court of appeals from whatever circuit that action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.* 817 F.2d 74, 75 (9th Cir. 1987)(administrative agencies are not free to refuse to follow precedent in cases originating with the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9th Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). Even USCIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000)(An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.")

It is further noted that a United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). This decision involved a petition filed under 8 U.S.C. § 1153(a)(3) as amended in 1976. At that time, this section provided:

Visas shall next be made available . . . to qualified immigrants who are members of the professions

The statute at 8 U.S.C. § 1153(b)(3)(A) currently provides:

Visas shall be made available to the following classes of aliens . . . (ii) Professionals. – Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold a baccalaureate.

It is noted that in support of the beneficiary's qualifications, counsel has provided three credential evaluations. It is noted that each of their conclusions are based on a combined determination that both the beneficiary's three-year bachelor of science degree and his post-graduate diploma from the National Institute of Fashion Technology, together represent a bachelor's degree. They provide as follows:

1) A credential evaluation from the Trustforte Corporation states that the beneficiary's coursework at the University of Pune represented three years of academic studies leading to a Bachelor of Science degree from an accredited institution of higher education in the United States. When combined with the beneficiary's two-year post-graduate diploma in Garment Manufacturing Technology from the National Institute of Fashion Technology, the evaluation concludes that the beneficiary had obtained the equivalent of a Bachelor of Science Degree in Textile Science from an accredited US institution of higher education.

2) A second evaluation from Morningside Evaluations and Consulting also determines that the beneficiary's studies at the University of Pune and resulting 1996 Bachelor of Science degree, when combined with his post-graduate studies at the National Institute of Fashion Technology, represent the U.S. equivalent of a Bachelor of Science in Textile Science.

3) A copy of an evaluation from the American Association of Collegiate Registrars and Admissions Officers (AACRAO), dated October 7, 2008, similarly surmised that the beneficiary's educational qualification is comparable to the completion of a Bachelor's degree awarded by an accredited college or university in the United States. This evaluation did not specify the field of major study.

The petitioner also provided a copy of a letter, dated July 24, 2008, from [REDACTED], a deputy registrar at the National Institute of Fashion Technology, who confirms that the beneficiary received a post-graduate diploma in Garment Manufacturing Technology in 1999. He also states that the minimum requirement was a three year college graduation degree.

As mentioned above, although these documents support that the beneficiary has a foreign combined educational equivalency that appears to be the U.S. equivalent of a bachelor's degree, they do not indicate that he has one four-year foreign equivalent degree required to be eligible to receive a professional classification in an immigrant petition for third preference classification.

Counsel asserts for the first time in the response to the AAO's request for evidence that the beneficiary should be approved as a skilled worker because it did not restrict the meaning of 'foreign equivalent' during its recruitment efforts, other than requiring it to be academic and not experiential. Counsel points to a candidate whose resume did not indicate any formal education that was received by the petitioner.

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.

The AAO is not persuaded that the beneficiary is eligible for a skilled worker classification in this case. 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. Further, the petitioner's express intent that the occupation be considered as a professional occupation on Part I, a, 1 on the ETA Form 9089 is also persuasive.

Counsel also asserts that because the ETA Form 9089 did not prohibit a combination of lesser degrees, then it must be allowed. Within the context of a skilled worker classification, the ETA Form 9089 does not provide that the minimum academic requirements of bachelor's degree in textile science or apparel science might be met through some other defined equivalency. In Part H, 8, the ETA Form 9089 states that no alternate combination of education and experience is acceptable.

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. CIS 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, CIS 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 CIS 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). CIS'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.

Even if considered under the skilled worker classification, the petitioner could not show that the beneficiary qualified for the position offered. To determine whether the petitioner communicated that a bachelor's degree could be met by a defined combination of lesser degrees or diplomas, the AAO examined the copies of three newspaper advertisements and the petitioner's corporate notice of posting placed for the position. The recruitment postings stated the educational requirements as "Must have B.S. App/Text Science or foreign equiv." A copy of a New York job bank advertisement provided only that a Bachelor's Degree was the required education.

A copy of a recruitment report addressed to the DOL, dated July 19, 2005, stated that the "requirements for the position include a Bachelor's Degree in Apparel or Textile Science, 2 yrs of related experience and working knowledge of Hindi, in order to effectively communicate with our vendors, suppliers and colleagues in India." The petitioner reported that two resumes were received, but both were rejected because applicant (listed as number 1) "lacked relevant experience in the desired field. Lack of local language is also an impediment." The other applicant (listed as number 2) was not considered because lacked knowledge in appropriate field. Then the petitioner states that "both applicants did not possess the required educational

background for the position of business development manager, while both did not possess the required technical skills for this position.” Counsel states in her response to the AAO’s request for evidence, that U.S. workers without a single 4-year college degree were put on notice, and states that the petitioner interviewed a candidate who did not hold any formal education, (referring to applicant 1). We note that it is not evident from the copy of the rejection letter, dated July 18, 2005, that the applicant was interviewed. It merely states that the petitioner could not go further with the process and thanking the applicant for applying. Following a review of these materials, it appears that most advertisements merely stated “or foreign equivalent” with one stating nothing at all other than a bachelor’s degree was required. The AAO does not concur with counsel that based on the receipt of one resume, that the petitioner’s intent about the educational requirements were clearly communicated as accepting any equivalency based on a combination of degrees and/or diplomas.

Even if we accept that the position in this case could be classified as a skilled worker, and we do not, based on the terms of the labor certification and the record of proceedings, including copies of recruitment materials, the AAO does not conclude that the petitioner clearly communicated that a defined equivalency of lesser degrees or diplomas were an acceptable foreign equivalent to DOL or other potential applicants. Further, as the petitioner failed to list that the candidate could meet the degree requirement based on any combination of education, the beneficiary would not qualify for the position offered as he cannot show that he has the required bachelor’s degree based on one program of study.

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. 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.

ORDER: The appeal is dismissed.