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

U.S. Citizenship and Immigration Services

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OCT 06 2009

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
LIN 06 239 51822

IN RE: Petitioner:
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:

SELF-REPRESENTED

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).

Perry Rhew
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 software development firm. It seeks to employ the beneficiary permanently in the United States as a software engineer, application specialist. A Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification and denied the petition accordingly.

On appeal, the petitioner, through former counsel, submitted additional evidence and contends that the beneficiary's educational credentials satisfied the terms of the labor certification and that the petitioner established that the beneficiary had obtained the requisite work experience and had demonstrated its continuing ability to pay the proffered wage.

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

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

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

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date which is the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on July 17, 2003.[1]

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[1] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an

The Immigrant Petition for Alien Worker (I-140) was filed on August 14, 2006. Part 5 of the petition indicates that the petitioner was established in 1979, claims a gross annual income of $1,540,406, a net annual income of $62,804, and currently employs ten workers.

The Item 14 of the Form ETA 750, sets forth the minimum requirements for the position of a software engineer, application specialist. The proffered position requires a Bachelor of Science degree in Computer Engineering, Computer Science, Chemistry, or Physics. Item 14 also requires two years of work experience in the job offered. The job duties are set forth on Part 13 of the ETA 750 and are described as follows:

> Using knowledge in J2EE, Panther, Oracle, XML, Apache, C++, and HTML will plan, develop, test and document computer programs applying knowledge of programming techniques and computer systems. Will evaluate user requests for new or modified programs and will analyze reviews and alters program to increase operating efficiency or adapt to new requirements.

In determining whether a beneficiary is eligible for a preference immigrant visa, USCIS must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also*, *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As stated on the labor certification, the proffered position of software engineer requires a Bachelor of Science in Computer Engineering, Computer Science, Chemistry, or Physics.

DOL assigned the occupational code of 030.062-010, software engineer, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at 15-1031.00 for computer software engineers, applications, at *http://online.onetcenter.org/link/summary/15-1031.00*[2] and extensive description of the position and requirements for the 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

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immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date, including a prospective U.S. employer's ability to pay the proffered wage is clear.

[2] (Accessed 09/21/09).

"[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See id.* Additionally, DOL states the following concerning the training and overall experience required for these occupations:

> A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

More specific to this position, O*NET provides that 85 percent of responding computer software engineers, applications have a bachelor's degree or higher.[3] Further, DOL's Occupation Outlook Handbook, available online at http://www.bls.gov/oco/ocos267.htm, provides:

> **Education and Training.** Most employers prefer applicants who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. The usual college major for applications software engineers is computer science or software engineering. Systems software engineers often study computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs. In 2006, about 80 percent of workers had a bachelor's degree or higher.

Based on the position's job title, job duties, the educational requirements as set forth on the Form ETA 750, the SVP identified by DOL, the majority percentage of respondents that have a bachelor's degree or higher, the job in this case would be characterized as a professional position. Additionally, however, the petitioner has not established that the petition would be eligible for approval as a skilled worker.

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.

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[3] *See http://online.onetcenter.org/link/details/15-1031.00.*

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

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

> In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> >
> > (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

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

> Under § 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:
>
> > (1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and
> >
> > (2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

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

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-*

> *Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14). Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> * * *
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

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

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

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

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

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

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

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

In this matter, on Part B of the Form ETA 750, the beneficiary indicated that the highest level of education achieved relevant to the requested occupation is a Bachelor of Science in Chemistry from Bharathiar University, India, following the completion of a three-year course of study.

As noted in the request for evidence issued by the AAO, in corroboration of the Form ETA 750, the petitioner provided a copy of the beneficiary's diploma from Bharathiar University, India, indicating that he received a Bachelor of Science in Chemistry in September 1995. The record also contains a copy of the beneficiary's diploma in systems management from the National Institute of Information Technology, NIIT, Coimbatore, India, completed in May 1995. It is noted that the beneficiary failed to list this education on Part B of the ETA 750. *See Matter of Leung*, 16 I&N Dec. 2530(BIA 1976), where the Board's dicta notes that he beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B lessens the credibility of the evidence and facts asserted. Additionally, we note that the two evaluations that the petitioner submitted did not address the beneficiary's NIIT diploma, and former counsel on appeal, specifically states that the petitioner does not seek to rely on a combination of education, but rather solely on the beneficiary's degree from Bharathiar University.

In the AAO's request for evidence, the petitioner was advised that the AAO had reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, http://aacraoedge.accrao.org/register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

EDGE provides a great deal of information about the educational system in India, and while it confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate.[4]

As noted in the AAO's request for evidence, the record indicates that the petitioner submitted evaluations from of Career Consulting International (CCI), dated March 17, 2007, and an additional evaluation, dated March 16, 2007, from of Marquess Educational Consultants (MEC).

Both evaluators, and have been or are affiliated with each other as reflected on their respective biographies. They both claim that the beneficiary's three-year degree from Bharathiar University is, standing alone, equivalent to a Bachelor of Science degree, representing 120 semester credit hours, with a major in chemistry from a regionally accredited Institution in Higher Education in the United States.

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[4] EDGE discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

> Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

[5] 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.

[6] In past evaluations, has indicated that he has a "canonical diploma of Sacrae Theologiae Professor" from St. David's Oecumenical Institute of Divinity, which he equated to a Doctorate of Divinity. In this evaluation he states that he has a Doctorate of Divinity from St. Katherine's Institute of Theology and Religious Studies.

Both and consider the beneficiary's classroom or contact hours to determine that the beneficiary completed 120 credits in his Bachelor of Science degree from Bharathiar University, which would be the normal course requirement for a U.S. bachelor's degree. It is not clear that a "contact hour" or classroom hours as discussed in these evaluations 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.[7] The measures are based on two separate calculations and therefore cannot be considered as equivalent, or interchangeable. reaches this conclusion by assigning 3.53 credits to each course in the beneficiary's three-year degree program.[8] While she generally refers to the Indian 3-year bachelor's degree as having as many or more classroom hours as a U.S. four-year degree, there is no specific calculation that she specifically points to in order to determine the number of credits assigned to the beneficiary's course of study, and the beneficiary's transcript in the record does not include any such figure.

The evaluations are not probative of the beneficiary's formal education and are not consistent with the information contained in EDGE, which states that a Bachelor of Science in India represents two or three years of education toward a bachelor's degree, not the U.S. equivalent of a bachelor's degree. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

The petitioner was also requested to provide evidence of its recruitment efforts in order to demonstrate whether it communicated to otherwise available qualified U.S. workers that some other kind of combination of certificates, diplomas or degrees were acceptable to qualify for the offered position. The petitioner, did not respond to the AAO's request for evidence. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

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[7] 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.*

[8] failed to explain the basis of how she assigned "3.53" credits to each course that the beneficiary took in his Indian three-year degree, nor did she provide any evidence to support her method of assigning credit.

The director denied the petition based on his determination that the petitioner had failed to establish that the beneficiary's educational credentials satisfied the terms of the labor certification requiring a Bachelor of Science degree in Computer Engineering, Computer Science, Chemistry, or Physics.

The AAO does not find the evaluations to be probative of the beneficiary's possession of a Bachelor of Science degree in Computer Engineering, Computer Science, Chemistry, or Physics. USCIS may, in its discretion, use advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS, however, is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Further, as noted in the AAO's request for evidence, the record does not contain any evidence showing that the program of studies completed at NIIT is a postgraduate diploma issued by an accredited university or institution approved by AICTE and that its entrance requirement is the three-year bachelor's degree. Further, the record fails to indicate that NIIT was empowered to confer university accredited hours at the time of the beneficiary's admission or attendance. Additionally, it is noted that based on a review of the AICTE listings (http://www.nba-aicte.ernet.in/nmna.htm site,[9] NIIT in Coimbatore, India, is not an accredited institution within the state of Tamil Nadu, India. Therefore, the beneficiary's NIIT diploma would not represent attainment of a bachelor's degree upon which the beneficiary would qualify for the classification sought.

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 combination of certificates and diplomas, will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(3) of the Act as she does not have the minimum level of education required for the equivalent of a bachelor's degree. The beneficiary's attainment of three years of undergraduate university studies would not qualify as full Bachelor of Science degree as required on the Form ETA 750. Moreover, the petitioner failed to delineate any acceptable equivalency on the ETA 750 such as in Item 15 where other requirements are permitted to be stated.

Even if this job could also be considered in the skilled worker category as defined in section 203(b)(3)(A)(i) of the Act, and as advocated by counsel on appeal, 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,

[9] (Accessed 9/21/09).

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.

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 beneficiary is not eligible for a skilled worker classification in this case. As mentioned above, the record supports a finding that the certified position was appropriately classified as a professional by the petitioner's intent expressed in the record, the job title, job duties, the educational requirements as set forth on the Form ETA 750, and the majority percentage of software engineering respondents that have a bachelor's degree or higher as indicated in O*Net. Further, even if it were considered as a skilled worker petition, the petitioner cannot demonstrate that the beneficiary has a single-source bachelor's degree as required by the labor certification. The petitioner failed to state that it would accept any defined equivalency to a bachelor's degree.

We are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff,* 437 F. Supp. 2d, 1174 (D. Or. 2005) which found that [USCIS] "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church* at *8 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since CIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a). In reaching this decision, the court also concluded that the employer in that case tailored the job requirements to the employee and that DOL would have considered the beneficiary's credentials in evaluating the job requirements listed on the labor certification.[10]

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[10] Specifically, as quoted above, the regulation at 20 C.F.R. § 656.21(b)(6) requires the employer to "clearly document . . . that all U.S. workers who applied for the position were rejected for lawful job

Additionally, we also note the subsequent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. November 30, 2006) that was rendered in the same district. In that case, the ETA 750 labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience as a "specific level of *educational background.*" *Snapnames.com, Inc.* at *6. Additionally, the court determined that the word 'equivalent' in the

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related reasons." BALCA has held that an employer cannot simply reject a U.S. worker that meets the minimum requirements specified on the Form ETA-750. *See American Café,* 1990 INA 26 (BALCA 1991), *Fritz Garage*, 1988 INA 98 (BALCA 1988), and *Vanguard Jewelry Corp.* 1988 INA 273 (BALCA 1988). Thus, the court's suggestion in *Grace Korean* that the employer tailored the job requirements to the alien instead of the job offered actually implies that the recruitment was unlawful. If, in fact, DOL is looking at whether the job requirements are unduly restrictive and whether U.S. applicants met the job requirements on the Form ETA 750, instead of whether the alien meets them, it becomes immediately relevant whether DOL considers "B.A. or equivalent" to require a U.S. bachelor degree or a foreign degree that is equivalent to a U.S. bachelor's degree. We are satisfied that DOL's interpretation matches our own. In reaching this conclusion, we rely on the reasoning articulated in *Hong Video Technology*, 1998 INA 202 (BALCA 2001). That case involved a labor certification that required a "B.S. or equivalent." The Certifying Officer questioned this requirement as the correct minimum for the job as the alien did not possess a Bachelor of Science degree. In rebuttal, the employer's attorney asserted that the beneficiary had the equivalent of a Bachelor of Science degree as demonstrated through a combination of work experience and formal education. The Certifying Officer concluded that "a combination of education and experience to meet educational requirements is unacceptable as it is unfavorable to U.S. workers." BALCA concluded:

> We have held in *Francis Kellogg,* et als., 94-INA-465, 94 INA-544, 95-INA-68 (Feb. 2, 1998 (en banc) that where, as here, the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chose to list alternative job requirements, the employer's alternative requirements are unlawfully tailored to the alien's qualifications, in violation of [20 C.F.R.] § 656.21(b)(5), unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable. Therefore, the employer's alternative requirements are unlawfully tailored to the alien's qualifications, in violation of [20 C.F.R.] § 65[6].21(b)(5).
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> In as much as Employer's stated minimum requirement was a "B.S. or equivalent" degree in Electronic Technology or Education Technology and the Alien did not meet that requirement, labor certification was properly denied.

employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that [USCIS] properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19.

However, in *Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) (D.C. Cir. March 26, 2008) the court upheld an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree in a professional category and additionally noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) required skilled workers to submit evidence that they meet the minimum job requirements of the individual labor certification. In that case, the ETA 750 described the educational requirement as Bachelor's or equivalent" and that it required a four-year education. The court additionally upheld the USCIS denial in this context as well, where it would have necessitated the combination of the alien's other credentials with his three-year diploma to meet the requirements of the ETA 750. *Id.* at *13-14. In this case, the beneficiary must possess a Bachelor of Science degree in Computer Engineering, Computer Science, Chemistry, or Physics. The petitioner failed to specify any defined equivalency on the Form ETA 750. The beneficiary's formal education does not equate to the requisite four-year degree. Rather it is a three-year foreign Bachelor of Science degree in chemistry, which is not the U.S. equivalent of a single-source bachelor's degree. A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's degree from Bharathiar University cannot be considered a foreign equivalent degree for this purpose. The record fails to indicate that the position should be considered in a skilled worker category. Even if it were, however, the beneficiary's course of instruction at NIIT was not accredited by the AICTE and was not a post-graduate diploma as characterized by EDGE such that it would be considered in combination with a three-year degree. Moreover, the petitioner failed to provide any evidence of any recruitment efforts that might have demonstrated its intent to otherwise qualified U.S. workers that it would accept a defined equivalency to a Bachelor of Science degree in Computer Engineering, Computer Science, Chemistry, or Physics. The beneficiary's qualifications do not satisfy the requirements of the labor certification in either a professional or skilled worker category.

It is noted that that as referenced in *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984), USCIS is obliged to "examine the certified job offer *exactly* as it is completed by the prospective employer." (Emphasis added). USCIS' interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added).

As noted above, the petitioner failed to provide evidence as requested showing that the certificate from NIIT represents a recognized Indian post-graduate degree such as could be used to calculate a foreign equivalency to a baccalaureate degree if considering the petition within a skilled worker classification. Further, the petitioner also failed to provide evidence of its recruitment advertisements in order to demonstrate if it communicated its intent to otherwise qualified U.S.

workers that it would accept some kind of lesser combination of degrees, diplomas or certificates in lieu of a Bachelor of Science degree in Computer Engineering, Computer Science, Chemistry, or Physics as required on the ETA 750. The beneficiary educational credentials do not meet the terms of the labor certification whether considered for a preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional or as a skilled worker under 203(b)(3)(i) of the Act.[11]

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

[11] A skilled worker category requires that a petitioner must show that a beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification."