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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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**U.S. Citizenship
and Immigration
Services**

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: **OCT 22 2009**
SRC 05 003 51095

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

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

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

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

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

Perry J. Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Acting Director, Texas 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 staffing service. It seeks to employ the beneficiary permanently in the United States as an industrial relations director ("Assistant to the Regional Vice President"). As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

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)(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.

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 Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on August 19, 2002.² The Immigrant Petition for Alien Worker (Form I-140) was filed on October 4, 2004.

The job qualifications for the certified position of an industrial relations director are found on Form ETA 750 Part A. Item 13 describes the job duties to be performed as follows:

¹ After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004).

² 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 immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

Responsible for recruiting, interviewing, testing, evaluating, hiring, dispatching, monitoring, counseling and reviewing temporary employees for work assignments for light industrial, technical (e.g., engineering), supervisory/management, and warehouse/manufacturing positions. Create marketing proposals for major corporate clients, develop ads and recruitment literature using desktop publishing skills (write, edit, print), make client sales and follow-up calls. Present budget goals to Regional VP. Prepare payroll.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education (number of years)

Grade school	-
High school	-
College	-
College Degree Required	BA
Major Field of Study	Business administration or management

Experience:

Job Offered	2 years
(or)	
Related Occupation	2 years in project management and/or human relations management

Block 15:

Other Special Requirements None

As set forth above, the proffered position requires a Bachelor of Arts degree in business administration or management and two years of experience in the job offered of industrial relations director or two years of experience in the related job of project management and/or human relations.

On the Form ETA 750B, signed by the beneficiary, the beneficiary listed his prior education as: a bachelor's degree in architecture from San Buenaventura University in Cali, Colombia (September 1987 to December 1995). The Form ETA 750B also reflects the beneficiary's experience as follows:

May 1991 through January 1993 - [REDACTED]
[REDACTED] a construction company, in Cali, Colombia – Responsible for calculating the project costs including the detailed breakdown of material amount and costs.

Responsible for researching the best materials and suppliers, assigning subcontractors.

August 1993 through September 1993 – Intern for Conconcreto, S.A., a construction company, in Cali, Colombia – Responsible for supervising the building project of 2,600 low income housing units. A two month internship required for graduation.

March 1994 through April 1997 – Project Manager for Arkus, S.A., a property management company, in Cali, Colombia – Responsible for overseeing accurate completion of jobs, approving jobs, and authorizing payment. Responsible for the supervision of projects according to the blueprint specifications and continued customer service after completion of project.

July 1997 through June 1998 – Supervisor for Atempa, a staffing service company, in Cali, Colombia – Interviewed candidates searching for employment, extensive customer services dealing with customers, and made sure that proper temporary worker was sent on assignment.

June 2001 through the present (June 10, 2002) – Assistant to the Regional Vice President for the petitioner – Recruiting, interviewing, testing, evaluating, hiring, dispatching, monitoring, counseling, and reviewing temporary employees for work assignments for light industrial, technical (e.g., engineering), supervisory/management, and warehouse/manufacturing positions. Create marketing proposals for major corporate clients, develop ads and recruitment literature using desktop publishing skills (write, edit, print), make client sales and follow-up calls. Present budget goals to Regional VP. Prepare payroll.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma from La Universidad de San Buenaventura in Colombia. It indicates that the **beneficiary was awarded a Bachelor of Architecture on December 14, 1995.** The petitioner additionally submitted a credentials evaluation, dated March 6, 2001, from Global Education Group, Inc. The evaluation describes the beneficiary's diploma from La Universidad de San Buenaventura as a Bachelor degree in Architecture and concludes that it is equivalent to a Bachelor of Architecture in the United States. The evaluation further states that the beneficiary's "academic study and work experience are equivalent to the U.S. degree of Bachelor of Business Administration awarded by a regionally accredited university in the United States."

In evaluating the beneficiary's qualifications, Global Education Group, Inc. stated:

[The beneficiary] has worked in the business field since March 1994. He was employed as an Intern Architect/Project Manager for Arkus S.A. in Colombia from March 1994 to April 1997. His responsibilities included the following: administered and managed the financial systems of costs and budgets for the

company's construction projects; maintained the accounts payable, accounts receivable and payroll; handled the contractors, subcontractors, clients, financial institutions, investors and internal auditing; supervised, trained and recruited staff members; reported to management on the company's financial and project status on a monthly basis; and inspected and supervised construction sites periodically.

Using the three for one rule instituted by INS, [the beneficiary] meets the requirements for a U.S. Bachelor's degree equivalency in his field. He has completed the equivalent of the U.S. degree of Bachelor of Architecture awarded by a regionally accredited university in the United States. [The beneficiary] has also completed three years of professional work experience in the business field. The U.S. degree of Bachelor of Business Administration awarded by a regionally accredited university in the United States requires four years of undergraduate study. [The beneficiary's] education and responsibilities during his three years of work experience in the field of business demonstrate both the broad and professional knowledge that would be acquired in four years of academic study towards the award of the U.S. degree of Bachelor of Business Administration by a regionally accredited university in the United States. In conclusion, [the beneficiary's] academic study and three years of professional work experience in the field of business are equivalent to the U.S. Bachelor's degree in Business Administration (four year degree).

The acting director denied the petition on July 11, 2005. She determined that the beneficiary's bachelor of architecture degree could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in business administration or management because the evaluation from Global Education Group, Inc. reported that "the beneficiary had obtained the equivalent of a baccalaureate in business based on a combination of his architectural degree and three years of professional experience as an intern architect and project manager from 1994 to 1997." The acting director specifically noted:

Further, the Service does not accept the opinion of the evaluator that the beneficiary's three years as an "intern architect/project manager" combined with his architectural degree are equivalent to a four-year degree in business administration. Only two courses appeared to be related in any way to business management. Although a letter submitted by the beneficiary's employer from 1994 to 1997 reported that the beneficiary's responsibilities as a project manager included many management related activities, he was an intern and was attending college full-time from 1994 to 1996. Finally, though not mentioned by his evaluator, he was taking business related courses from 2/95 to 12/98. In sum, even if regulations governing immigrant petitions provided for a baccalaureate based in whole or in part on experience, the petitioner has not demonstrated that the beneficiary has the equivalent of a

baccalaureate in business based on a combination of education and experience.³

Accordingly, the petitioner failed to demonstrate that the beneficiary had the education required for the position offered.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel, submitted a brief, a second credentials evaluation prepared by Morningside Evaluations and Consulting, copies of newspaper ads and internet ads placed during the labor certification process, and a copy of a April 23, 2004 memorandum by William R. Yates, Associate Director for Operations, entitled *The Significance of a Prior [US]CIS Approval of a Nonimmigrant Petition in the Context of a Subsequent Determination Regarding Eligibility for Extension of Petition Validity*.

In determining the beneficiary's qualifications, Morningside Evaluations and Consulting stated:

The text below is an academic and experiential evaluation of the degrees and work experience attained by [the beneficiary] during the course of his academic and professional careers which is based upon his "Titulo de Arquitecto" degree from La Universidad de San Buenaventura and employment history, as represented in letters from employers and curriculum vitae.

Graduation from high school and competitive entrance examination scores are requirements for admission and enrollment in La Universidad de San Buenaventura, an accredited institution of higher learning in Colombia. After enrolling and completing academic coursework and examinations at the University, [the

³ The AAO notes that the petitioner has filed a second Form I-140, LIN-07-060-52798, on behalf of the beneficiary that was denied on February 22, 2007. The director in his decision stated:

The educational evaluation [Global Education Group, Inc.] in the record does not find that the beneficiary holds a foreign equivalent degree. Rather, the evaluation relies on a combination of the beneficiary's education and employment experience in finding that the beneficiary has the equivalent of a bachelor's degree. Moreover, in calculating the equivalent education from the beneficiary's experience, the report uses the formula of "3 years of experience = 1 year of university-level credit." That formula is applicable to non-immigrant petitions, but is not applicable to immigrant petitions. See C.F.R. § 214.2(h)(4)(iii)(D)(5).

A degree in Architecture cannot be considered to be related to a degree in Business Administration or Management. A review of the transcripts reveals that the vast majority of the courses completed by the beneficiary during his ten semesters of study relate to architecture, design, or construction methods. As the petitioner has not demonstrated that the beneficiary met the minimum requirements at the time Form ETA 9089 was accepted, he cannot be found to be qualified.

beneficiary] was awarded a “Titulo de Arquitecto” in 1995. The diploma demonstrates that [the beneficiary] completed his course of studies at La Universidad de San Buenaventura.

[The beneficiary] completed coursework in general studies, including coursework in English, the social sciences, mathematics, and the sciences. Additionally, [the beneficiary] completed specialized courses in his area of concentration, Architecture, and other related courses. Coursework in the above-mentioned areas, coupled with other specialized studies, comprise the required curriculum for a candidate seeking a university degree from an accredited institution of higher education in the United States.

The studies undertaken, the number of credit units earned, the number of years of coursework, and the degree earned all indicate that [the beneficiary] satisfied requirements equivalent to those required for the attainment of a Bachelor of Science degree in Architecture from an accredited institution of higher education in the United States.

In addition to his academic studies, [the beneficiary] has worked for four years in Business Administration and related fields. During this period, [the beneficiary] served in progressively sophisticated and responsible positions, together with peers, in both non-managerial and managerial capacities, at a level of work experience equal to Bachelor’s-level training.

From March 1994 through April 1997, [the beneficiary] worked for Arkus Ltd. as an Intern Architect and Project Manager. He was responsible for the administration and management of the financial systems of costs and budgets for company construction projects. He was responsible for the administration of the company’s costs and budgets, and the maintenance of Account Payables, Accounts Receivable and payroll, through a network of contractors, subcontractors, clients, financial institutions, investors and internal auditing. He was in charge of seventeen staff members, and was responsible for recruiting, training, and development of personnel. He reported to the company management on project status, ensured quality control, and managed high-profile projects.

Form July 1997 through June 1998, [the beneficiary] worked for Atempo Soluciones Epresariales as the Staffing Supervisor. He was responsible for searching for and selecting temporary personnel. He developed and documented the complete staffing process, headed a task force to identify marketing opportunities, conducted an analysis of competitors, improved customer service, and gained computer skills.

The foregoing is a summary of [the beneficiary’s] professional experience and itemizes his responsibilities during a period of four years of employment experience

and training in the field of Business Administration. The responsibilities handled by [the beneficiary] throughout his career are indicative of Bachelor's-level coursework in Business Administration and related subjects.

Considering the equivalency ratio mandated by the Bureau of United States Citizenship and Immigration Services of three years of work experience for one year of college training, [the beneficiary's] four years reflect the time equivalent of not less than one additional year of Bachelor's-level academic training in Business Administration. On the basis of the concentrated nature of his work experience and training in Business Administration, we hereby affirm that [the beneficiary's] experiential qualifications are comparable to university-level training in Business Administration.

On the basis of the credibility of La Universidad de San Buenaventura and its higher education program, and considering the four years of work experience and professional training in Business Administration, it is the judgment of Morningside Evaluations and Consulting the [the beneficiary] has attained the equivalent of at least a Bachelor of Business Administration from an accredited institution of higher education in the United States.

On appeal, counsel claims:

DOL certified the application of [the petitioner] for [the beneficiary] in the position of "Assistant to the Regional Vice President." The job required a bachelor's degree and/or the equivalent education and experience in business administration. The ads placed in *The Commercial Appeal* as well as on *America's Job Bank* specified such.

[The beneficiary] has a bachelor's degree in architecture and many years of experience. Two independent credentials evaluators determined that his education and experience are equivalent to a bachelor's degree in business administration (Global Education Group and Morningside Evaluations are both routinely accepted by USCIS). USCIS has accepted the GEG evaluation for both [the beneficiary's] H1B visas.⁴

The petitioner filed an I-140 and marked the box "skilled workers and professionals." USCIS denied the I-140 on the basis the [the beneficiary] could not be classified as a professional because equivalency evaluations cannot be used for immigrant visa

⁴ The evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. See 8 CFR § 214.2(h)(4)(iii)(D)(5). The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor.

purposes. [The beneficiary] qualifies for an immigrant visa as a “skilled worker” and therefore, the USCIS has erred in denying this petition.

The proffered position is for an industrial relations director. Part A of the Form ETA 750 indicates that DOL assigned the occupational code of 166.117-010 with accompanying job title industrial relations director, to the proffered position. DOL’s occupational codes are assigned based on normalized occupational standards. According to DOL’s public online database at <http://online.onetcenter.org/link/summary/11-3040.00> (accessed October 5, 2009 under 11-3040.00, DOL’s updated correlative occupation) and its description of the position and requirements for the position most analogous to the petitioner’s proffered position, the position falls within Job Zone Four requiring “considerable preparation needed” for the occupation type closest to the proffered position.

DOL assigns a standard vocational preparation (SVP) range of 7.0 to < 8.0 to the occupation, which means that “Most of these occupations require a four-year bachelor’s degree, but some do not.” 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. Because of the requirements of the proffered position and DOL’s standard occupational requirements, the proffered position is for a professional, but might also be considered under the skilled worker category.⁵

⁵ The AAO notes that the beneficiary is currently holding the proffered position as a H1B. Section 101(a)(15)(H)(i)(b) of the Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b), provides a nonimmigrant classification for aliens who are coming temporarily to the United States to perform services in a specialty occupation.

Section 214(i)(1) of the Act, 8 U.S.C. § 1184 (i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor’s or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

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.

Thus, it is clear that Congress intended this visa classification only for aliens who are to be employed in an occupation that requires the theoretical and practical application of a body of highly specialized knowledge that is conveyed by at least a baccalaureate or higher degree in a specific specialty.

Consistent with section 214(i)(1) of the Act, the regulation at 8 C.F.R. § 214.2(h)(4)(ii) states that a specialty occupation means an occupation “which [1] requires theoretical and practical application of a body of highly specialized knowledge in fields of human endeavor including, but not limited to, architecture, engineering, mathematics, physical sciences, social sciences, medicine and health, education, business specialties, accounting, law, theology, and the arts, and which [2] requires the attainment of a bachelor's degree or higher in a specific specialty, or its equivalent, as a minimum for entry into the occupation in the United States.”

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

The above regulation uses 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.

The regulation at 8 C.F.R. 204(5)(1)(3)(ii)(B) states the following:

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 above regulation requires that the alien meet the requirements of the labor certification.

Because the petition's proffered position qualifies for consideration under both the professional and skilled worker categories, the AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional category.

Initially, however, we will provide an explanation of the general process of procuring an employment-based immigrant visa and the roles and respective authority of both agencies involved.

As noted above, the Form ETA 750 in this matter is certified by DOL. Thus, at the outset, it is useful to discuss 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.

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 the position and the alien are qualified for a specific immigrant classification. 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).⁶ *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).

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*

⁶ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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).

Therefore, it is DOL’s responsibility to certify the terms of the labor certification, but it is the responsibility of U.S. Citizenship and Immigration Services (USCIS) to determine if the petition and the alien beneficiary are eligible for the classification sought. For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien had a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation requires the submission of “an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study.” (Emphasis added.)

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).

Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word “degree” in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d.

1289m 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement in of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate degree, we would not consider education earned at an institution other than a college or university.

The petitioner in this matter relies on the beneficiary's combined education and work experience to reach the "equivalent" of a degree, which is not a bachelor's degree based on a single degree in the required field listed on the certified labor certification. The beneficiary's "single degree" is in Architecture, not a field of study required by the labor certification. The petitioner did not state on Form ETA 750 that the degree requirement could be met through any combination of education and/or experience.

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. 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). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree 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," from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor's degree.

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds 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*, 437 F. Supp. 2d at 1179 (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 USCIS, 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).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. 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 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. *Snapnames.com, Inc.* at 11-13. Additionally, the court determined that the word ‘equivalent’ in the 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 USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at 17, 19.

In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner’s intent regarding educational equivalence is clearly stated on the Form ETA 750 and does not include alternatives to a bachelor’s degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at 7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner’s asserted intent, USCIS “does not err in applying the requirements as written.” *Id.* See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a “bachelor’s or equivalent” requirement necessitated a single four-year degree). In this matter, the Form ETA 750 does not specify an equivalency to the requirement of a bachelor’s degree in business administration or management.

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate about the beneficiary’s qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to “examine the certified job offer *exactly* as it is completed by the prospective employer.” *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve “reading and applying *the plain language* of the [labor certification application form].” *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be

expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Further, the employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 14 n. 7. Thus, USCIS agrees that the best evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position is evidence of how it expressed those requirements to DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence is needed to ensure inflation of those requirements is not occurring in an effort to fit the beneficiary's credentials into requirements that do not seem on their face to include what the beneficiary has.

To determine 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).

The petitioner submitted two evaluations (from Global Education Group, Inc. and Morningside Evaluations and Consulting) of the beneficiary's education to show that the beneficiary met the educational requirements of the labor certification. Both evaluations state that based on the beneficiary's education and work experience, he has attained the equivalent of a bachelor's degree in business administration.

The Form ETA 750 does not provide that the minimum academic requirements of an industrial relations director might be met through a combination of education and experience or some other formula other than that explicitly stated on the Form ETA 750. The copies of the notice(s) of Internet and newspaper advertisements and recruitment, provided on appeal do show that the educational requirements for the job requires a bachelor degree in business administration or equivalent combination of education and a minimum of two years of experience in human relations and/or project management. However, the Form ETA 750 specifically states that the proffered position requires a bachelor's degree in business administration or management and does not include any equivalency through education and experience. Thus, the alien does not qualify as a skilled worker as he does not meet the terms of the labor certification as explicitly expressed or as extrapolated from the evidence of its intent about those requirements during the labor certification process.

Even if the AAO were to accept the equivalency evaluations, which rely on a combination of education and experience, then the beneficiary cannot show that he has the required two years of

prior experience as the letters submitted to document his experience from March 1994 to April 1997 and from July 1997 to June 1998 were encompassed in the evaluation to reach a Bachelor's determination.

Again, the AAO notes that the evaluations by Global Education Group, Inc. and Morningside Evaluations and Consulting both state that the beneficiary has a single degree in Architecture and that the beneficiary's transcripts reflect courses primarily related to a degree in Architecture. In addition, it is not clear that all of the beneficiary's experience as an "intern architect/project manager" was business related. Therefore, the AAO does not find that the beneficiary has a Bachelor's degree in Business Administration or Management or their equivalent.

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and fails to meet the requirements of the labor certification, and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act.

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.