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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

PUBLIC COPY

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[Redacted]

FILE: [Redacted]
LIN 06 233 52716

Office: NEBRASKA SERVICE CENTER

Date: SEP 15 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;

[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).

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 overnight delivery service company. It seeks to employ the beneficiary permanently in the United States as a general manager. 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).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. 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 November 27, 2002.³ The Immigrant Petition for Alien Worker (Form I-140) was filed on August 8, 2006.

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

² The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

³ 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.

The job qualifications for the certified position of general manager are found on Form ETA-750 Part A. Item 13. The job duties include planning business strategies, formulating business policies, and directing business operation of overnight delivery service company in California.

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	8
High school	4
College	4
College Degree Required	Bachelor
Major Field of Study	Business or Economic

Experience:

Job Offered	Two Years
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Block 15:

Other Special Requirements (Blank)

As set forth above, the proffered position requires four years of college culminating in a Bachelor degree in business or economics and two years of experience in the job offered.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma from the University of Alberta, Alberta, Canada that appears to indicate the beneficiary earned a Bachelor in Arts, with no specific academic field noted on the form.⁴ The petitioner additionally submitted a transcript of the beneficiary's studies at the University of Alberta that indicates he studied for one semester in 1964 in the Faculty of Science and then was advised to withdraw. The transcript further indicates that in 1965, the beneficiary transferred to the Faculty of Arts, carrying transfer credit for a Physical Education course. He then studied the winter of 1965, the winter of 1966 and the winter of 1967, taking seven courses in the first two semesters, and five

⁴ The diploma is written in Latin. The AAO notes that the regulation at 8 C.F.R. § 103.2(b)(3) provides:

Translations. Any document containing foreign language submitted to [USCIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

courses in the 1967 final winter semester.⁵ On June 4, 1968, the beneficiary's transcript notes that the beneficiary was granted a Bachelor of Arts degree. The petitioner also submitted a credentials evaluation, dated April 5, 2004, from The Anderson School at UCLA, written by [REDACTED]. Mr. [REDACTED] states that the beneficiary's bachelor's degree from the University of Alberta is equivalent to a bachelor's degree from a U.S. university, and that his Certified Accountant certification and extensive business experience make the beneficiary well-qualified for the proffered position.

The petitioner also submitted an evaluation dated February 9, 2004 written by [REDACTED] The Foundation for International Studies, Bothell, Washington. Ms. [REDACTED] states that the beneficiary's bachelor of arts degree from the University of Alberta is equivalent to three years of university-level credit from an accredited U.S. college or university. Ms. [REDACTED] also examines the beneficiary's work history and educational background and states that the beneficiary has the equivalent of a bachelor's degree in business administration from an accredited U.S. college or university. She further states that the beneficiary's equivalent of a U.S. baccalaureate degree followed by at least five years of progressive experience in a specialty, provided the beneficiary with the educational equivalency of a person with a master of business administration degree from an accredited U.S. college or university.

The director denied the petition on January 30, 2007. He determined that the beneficiary's bachelor of arts degree from the University of Alberta was a three year course of studies and thus, the beneficiary did not have the equivalent of a U.S. bachelor's degree which requires four years of university-level studies.

On appeal, counsel submits a statement and resubmits the two educational equivalency documents from [REDACTED] and [REDACTED]. Counsel states that the petitioner had provided two evaluation reports that determined the beneficiary's Canadian bachelor degree was equivalent to a U.S. bachelor's degree, and that the USCIS assertion that a three-year bachelor degree is not equivalent to a U.S. bachelor degree is contrary to the evaluators' conclusions. Counsel notes that the beneficiary also studied additional courses to get his Chartered Accountant license in Canada in 1971 and that the designation "C.A." is equivalent to the designation of C.P.A. in the United States.

Part A of the Form ETA 750 indicates that DOL assigned the occupational code of 11-1021.00 with accompanying job title General and Operations Manager, 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/crosswalk/> (accessed August 18, 2009 under <http://online.onetcenter.org/link/summary/11-1021.00>, 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 Three requiring "medium preparation" for the occupation type closest to the proffered position.

⁵ The AAO notes that the beneficiary on Part B of ETA Form 750 states that he studied economics at the University of Alberta, Canada from 1962 to 1968, and received a degree.

DOL assigns a standard vocational preparation (SVP) range of 6-7 to the occupation, which means that “Most occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Some may require a bachelor's degree.” Additionally, DOL states the following concerning the training and overall experience required for these occupations:

Previous work-related skill, knowledge, or experience is required for these occupations. For example, an electrician must have completed three or four years of apprenticeship or several years of vocational training, and often must have passed a licensing exam, in order to perform the job. Employees in these occupations usually need one or two years of training involving both on-the-job experience and informal training with experienced workers.

See id.

The DOL classification of the position does not require that all candidates for the position have a bachelor’s degree for entry into the occupation, however, the certified Form ETA 750 requires four years of college culminating in a Bachelor degree in business or economics and two years of experience, which is more than the minimum required by the regulatory guidance for professional positions found at 8 C.F.R. § 204.5(l)(3)(ii)(C). Based on the DOL’s classification and assignment of educational and experiential requirements for the occupation, the certified position can be considered either a professional or a skilled worker occupation.⁶

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.

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.

⁶ The petitioner has described the proffered position as a professional classification throughout the record. The AAO will examine both classifications in these proceedings.

On November 25, 2008, the AAO issued a request for evidence to the petitioner. In this request, the AAO noted that there was evidence in the record of proceeding that the beneficiary received his bachelor's degree based on three years of university level education. The AAO further advised that according to Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), the University of Alberta at Edmonton offers an undergraduate diploma program requiring one to three years of study. The AAO also noted that the petitioner did not specify on the Form ETA 750 that the minimum academic requirements of four years of college and a bachelor's degree in business or economics might be met through a combination of lesser degrees and/or a quantifiable amount of work experience.

The AAO requested that the petitioner submit evidence that at the time it submitted to DOL its Form ETA 750 application and attachments that it made reasonable good faith efforts to recruit U.S. workers. The AAO also noted that the beneficiary stated he was a registered chartered accountant and a member of the Institute of Chartered Accountants, Canada, admitted into membership on December 10, 1971. The AAO requested that the petitioner provide evidence of the course of instruction, theoretical and practical taken by the beneficiary to qualify for the chartered accountants membership and any professional undertaking for which such membership qualifies the beneficiary.

In response to the request for evidence, counsel submits the petitioner's Request for Reduction in Recruitment memo with recruiting results, its posting notice, and copies of advertisements placed in newspapers, Internet sites and the petitioner's website at <http://www.shipgso.com>. In all job advertisements, the experience and educational requirements for the proffered job are listed as "2 yrs exp. Bach. Deg. Bus or Economics," while the posting notice states "Bachelor Degree (business or economics) or foreign equivalent. Plus 2 years experience or foreign equivalent."

Counsel also submits a letter dated March 24, 2004 from Institute of Chartered Accountants of Alberta (ICAA), Edmonton, Alberta written by [REDACTED]. The letter states that the beneficiary was admitted to membership as a Chartered Accountant on December 10, 1971, and that the beneficiary successfully completed the required 36 months period of practical experience and listed the 13 courses taken and passed by the beneficiary from 1968 to 1971.⁷ The letter states that the basis of the beneficiary's admission as an ICAA student was his Bachelor of Arts from the University of Alberta, granted June 4, 1968.

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

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-

⁷ The document also indicates three courses, Economics, Quantitative Methods and Computing science, for which the beneficiary received exemptions.

(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 left to USCIS to determine whether the proffered position and alien qualify 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).⁸ *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).⁹

⁸ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

⁹ The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

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).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or 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).

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. 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.

We note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 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. *Id.* 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. *Id.* 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. *Id.* 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 ETA 750 and does not include alternatives to a four-year 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

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).

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 or economics.

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

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) 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.) 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. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement 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 member of the profession 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, we could not consider education earned at an institution other than a college or university.

Moreover, as advised in the request for evidence issued to the petitioner by this office, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).¹⁰ 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.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at www.aacrao.org/publications/guide_to_creating_international_publications.pdf. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

EDGE’s credential advice provides that in the Alberta Canada higher education system: “The University level first stage is the Baccalaureate Degree. Most undergraduate study leads to a “General” (Pass) Bachelor’s Degree or an “Honours” or specialized degree (4 years and prescribed subject concentration). Degrees are normally titled in broad descriptive groups, e.g. B.A. and B.Sc. The first stage also includes undergraduate Diplomas (1-3 years of study) and short (up to one year) special Certificate programs; these may enable entry to degree programs and are frequently given in close cooperation with professional bodies.” In its credentials section, EDGE notes that The Bachelor’s Degree (General, Pass) represents attainment of a level of education comparable to 3 years of university study in the United States. Credit may be awarded on a course-by-course basis.” It also notes that most of these three-year diplomas began to disappear from the latter 1980s but a few still exist in Alberta’s four universities. EDGE does not provide any guidance in terms of admission requirements or the equivalency of academic credentials provided by the ICAA to any U.S. baccalaureate program.

In the instant case, the petitioner submitted two educational equivalency reports.¹¹ In the FIS evaluation, [REDACTED] determined that the beneficiary had the equivalent of three years of university-level credit and then used an equivalence of three years of work experience for one year of university-level studies to determine that the beneficiary had achieved the equivalent of a U.S. four-year bachelor’s degree in business administration. However, that regulatory-prescribed equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). In his evaluation, [REDACTED] does not reference any three years of work experience for one year of university-level coursework equivalency, but rather states that the beneficiary’s bachelor’s degree is equivalent to a

10 In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

¹¹ The director only referenced [REDACTED]’s evaluation in his decision, although he appeared to refer to [REDACTED]’s comments when he analyzed [REDACTED]’s evaluation.

bachelor degree from a U.S. university. notes the beneficiary's membership in the Canadian Institute of Chartered Accountants and states that the educational, examination and experience requirements for obtaining a Canadian Chartered Accountant designation are equivalent to the U.S. Certified Public Accountant (CPA).

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Additionally, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate. In the instant case, The FIS evaluation report is given no weight as it combines both the beneficiary's education and work experience to find that the beneficiary has the equivalent of a U.S. bachelor's degree. evaluation report is also given no weight as the EDGE material clearly states that the University of Alberta baccalaureate programs are one to three years in duration and clearly are not the equivalent of a four year U.S. baccalaureate degree.

In examining the beneficiary's credentials and the two evaluation submitted to the record, the AAO notes that neither evaluator assert that the combination of the beneficiary's three year baccalaureate degree combined with his studies at the ICAA resulting in membership in the association are the equivalent of a four-year U.S. baccalaureate degree in business or economics. The AAO notes that EDGE also does not examine such a combination. The AAO also notes that the Institute of Chartered Accountants of Alberta is not a university.¹² Thus, neither the petitioner nor EDGE establishes such an equivalency.

The Form ETA 750 does not provide that the minimum academic requirements of four years of college and a Bachelor's degree in business or economics might be met through three years of college 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, provided with the petitioner's response to the request for evidence issued by this office, also fail to advise any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. As previously noted, all job advertisements require a bachelor's degree in business or economics, and two years of work experience.

¹² According to its website, the Institute of Chartered Accountants of Alberta (ICAA) is the self-governing body which regulates more than 11,500 Alberta Certified Accountants and Certified Accountant students. The ICAA protects the public by setting the most rigorous qualification criteria, and establishing and enforcing the highest professional, ethical and practical standards. ICAA works in partnership with other provincial institutes and the Canadian Institute of Chartered Accountants (CICA) to support national standards and programs. See <http://www.albertacas.ca/becomeaCA/FAQS.aspx>. (available as of August 18, 2009.) The website indicates that the CA program is a combined online study/work experience program.

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)(A)(ii) of the Act.

Even if the petition qualified for skilled worker consideration, the beneficiary does not meet the terms of the labor certification, and the petition would be denied on that basis as well. See 8 C.F.R. § 204.5(l)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification). For example, the AAO notes that the petitioner has not submitted evidence that the beneficiary has the requisite four year bachelor's degree in business or economics or the two years of prior work experience as general manager, operations prior to the 2001 priority year.¹³

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.

¹³ 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. The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *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.