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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

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**U.S. Citizenship
and Immigration
Services**

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FILE:

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LIN 07 140 52481

Office: NEBRASKA SERVICE CENTER

Date:

SEP 28 2009

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)

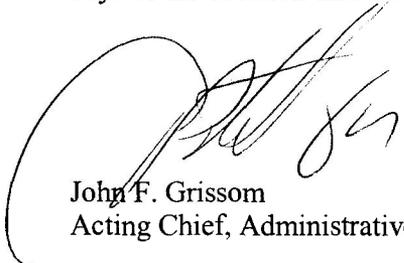
ON BEHALF OF PETITIONER:

[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 public accounting firm specializing in litigation. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.¹ 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

¹ On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

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).

158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on December 18, 2006.³ The Immigrant Petition for Alien Worker (Form I-140) was filed on April 16, 2007.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

On the ETA Form 9089, the "job duties" position description provides that an accountant should review and analyze financial statements and income tax returns, prepare tax forms including those valuing assets and liabilities and community property, consult with appropriate personnel regarding litigation, and prepare financial documents.

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

H.4. Education: Minimum level required: Bachelor's.

4-A. States "if other indicated in question 4 [in relation to the minimum education], specify the education required."

[None specified].

4-B. Major Field Study: Accounting.

7. Is there an alternate field of study that is acceptable.

The petitioner checked "yes" to this question.

7-A. If Yes, specify the major field of study:

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.

Finance or Auditing.

8. Is there an alternate combination of education and experience that is acceptable?

The petitioner checked “no” to this question.

- 8-A. If yes, specify the alternate level of education required:

[N/A].

9. Is a foreign educational equivalent acceptable?

The petitioner listed “yes” that a foreign educational equivalent would be accepted.

14. Specific skills or other requirements: [None listed].

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (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 set forth above, the proffered position requires a Bachelor’s degree or foreign educational equivalent degree in accounting, finance, or auditing. The terms of the labor certification also require twelve months experience in the job offered.

On the ETA Form 9089, signed by the beneficiary, the beneficiary represented that the highest level of achieved education related to the requested occupation was “Bachelor’s.” She listed the institution of study where that education was obtained as the Canadian Institute of Chartered Accountants, and the year completed as 2000.

In support of the beneficiary’s educational qualifications, the petitioner submitted the beneficiary’s transcripts from Camosun College and the Institute of Chartered Accountants of British Columbia. The petitioner also submitted a copy of the beneficiary’s certificate of chartered accountant awarded by the Institute of Chartered Accountants of British Columbia. The transcript from Camosun College indicates that the beneficiary earned 102.5 credits and was granted a “Diploma in Business Administration – Accounting, Co-op.” The petitioner additionally submitted a credentials evaluation, dated August 6, 2007, from Professor at Hofstra University. The

evaluation describes the beneficiary's qualification of a chartered accountant as the equivalent of a United States Bachelor of Science degree in accounting.

The director denied the petition on August 29, 2007. He determined that the beneficiary's qualification as a chartered accountant could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in accounting because the Institute of Chartered Accountants of British Columbia is not a degree granting institution such as a college or university and the petitioner submitted no transcript showing that the beneficiary received a Bachelor's degree from any institution.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel stated that the ETA Form 9089 does not require the receipt of an actual Bachelor's degree, but only requires that the alien have achieved a Bachelor's level of education. In addition, counsel states that the petitioner never intended to require the receipt of a Bachelor's degree and submitted its recruitment materials, including job advertisements for the position, showing that it did not advertise for an accountant with a Bachelor's degree.

DOL assigned the code of 13-2011.01 to the proffered position. According to DOL's public online database at <http://online.onetcenter.org/link/summary/13-2011.01> (accessed August 3, 2009) 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" for the occupation type closest to the proffered position.

According to DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. DOL assigns a standard vocational preparation (SVP) range of 7-8 to Job Zone 4 occupations, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." See <http://online.onetcenter.org/link/summary/13-2011.01#JobZone> (accessed August 3, 2009). 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.

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.

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.

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.

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-

(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).⁴ *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

⁴ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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).⁵

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. In order to

⁵ 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).

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).

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. 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."

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 9089 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 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 ETA Form 9089 does not specify an equivalency to the requirement of a Bachelor's 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). 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.

The information in the record on appeal about the Institute of Chartered Accountants of British Columbia ("Institute") states that its mission is "to protect and serve the public, our members, and students by providing exceptional education, regulation, and member services programs so that chartered accountants can provide the highest quality of professional services." The information also states that the Institute may "train, govern, and regulate its members." The front page of the Institute's website contains no link for students or any other indication that the Institute is engaged in training or educating future accountants. The Member Center section of the website contains a link for students, which contains information about classes offered and their equivalencies with courses offered at other institutions, however, no indication appears to indicate that one can matriculate or receive a degree from the Institute as would be expected of an institution of higher learning such as a college or university. The letter from [REDACTED], Registrar of the Institute, states that "the Institute may establish educational programs for students in accountancy" and describes the courses taken by the beneficiary. This letter does not state that the Institute could or did bestow a degree upon the beneficiary as a result of those studies. Although the ETA Form 9089, Part J indicates that the beneficiary received a Bachelor's degree from the Institute, no diploma or other proof of matriculation was presented. The transcript submitted indicates that a diploma in business administration, focus on accounting was granted, however the date of that diploma predates some of the classes taken by the beneficiary as reflected on the transcript.⁶

⁶ The diploma date from the beneficiary's transcript from Camonsun is August 16, 1996, but the beneficiary took classes during the September 4, 1996 to December 7, 1996 term and the January 7, 1997 to April 11, 1997 term, after the date the diploma was issued. Overall, the transcript reflects

Instead, the petitioner's submission of a transcript from Camosun College indicates that the beneficiary received 102.5 credits and received a "Diploma." We note that a Bachelor's degree in the United States requires four years of study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). The credential evaluation submitted from ██████████ states that the beneficiary has the foreign equivalent of a Bachelor of Science degree because one cannot become a Chartered Accountant without "complet[ing] the equivalent of bachelor's-level academic qualifications, pass[ing] qualifying examinations, and complet[ing] professional experience as an articulated clerk in the accounting profession." ██████████ noted that the beneficiary received her degree following three years at Camosun College before completing advanced classes at the Institute. ██████████ considers this combination of the degree from Camosun College and further studies at the Institute to be equivalent to the single-source United States bachelor's degree. Despite no proof of any course credits received by the beneficiary over 102.5, ██████████ concludes that the beneficiary must have received 120 credit hours because of her receipt of the rank of chartered accountant. This sort of circular logic is not persuasive absent clear and convincing independent evidence in the form of supporting documentation. The evaluation does not state that the beneficiary's diploma from Camosun College would individually be equivalent to a U.S. bachelor's degree. Similarly, the beneficiary's studies at the Institute of Chartered Accountants would not, on its own, be the equivalent of a U.S. bachelor's degree in the required field of study.⁷

The petitioner also submitted a letter from ██████████ Associate Dean at the Camosun College School of Business, which states that "the academic course work required to achieve the professional designation of 'Chartered Accountant' is at least equivalent to four years of post-secondary education at the bachelor's degree level." The letter from ██████████ contains no explanation for this conclusion or any other reasoning underpinning her conclusion. Additionally, an equivalent of a bachelor's degree is not the same as a four-year bachelor's 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."

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, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

that the beneficiary took classes from 1989 to 1997 and earned a total of 102.5 credits. 12.5 of those credits were earned after the date of the diploma meaning that the diploma was issued upon completion of 90 credits.

⁷ Additionally, the document issued to the beneficiary states that she was "admitted as a Member of the Institute of Chartered Accountants" and is "entitled to use the designation Chartered Accountant." This document references a credential or title, and is not a degree issued by a university within the meaning of 8 C.F.R. § 204.5(l)(3)(ii)(C).

The ETA Form 9089 does not provide that the minimum academic requirements of a Bachelor of Science degree in accounting, finance, or auditing might be met through three years of college and passing an exam or some other formula other than that explicitly stated on the ETA Form 9089. The petitioner did not set forth any alternative education and experience requirements in Section H, question 8. Additionally, the petitioner failed to designate in Section H, question 14 that it would allow any alternate combination of education, training, and experience. The recruitment materials provided with the petitioner's appeal are unhelpful in demonstrating the petitioner's intent. The Internet based job advertisements provided, posted on www.SpectrumSearch.Net and www.careerbuilder.com, state that a requirement of the position is "3 to 7 years of current Local or Big 4 CPA firm experience." Because of the different experience required by these Internet advertisements as opposed to the 12 months experience required by the labor certification, these Internet advertisements appear to be for a different position or did not accurately state the certified minimum requirements. The copies of the newspaper advertisements advertise for an accountant without mentioning any education or experience requirements. These advertisements are not specific enough to indicate the petitioner's intent regarding the educational requirements of the position.⁸ The petitioner did not submit all of the evidence of its recruitment effort in that it did not submit a recruitment report summarizing applicants and the reasons for their disqualification for the position or any correspondence with DOL clarifying the degree requirement.

On appeal, counsel argues that the director "imposed a degree requirement" upon the petitioner that it did not intend in requiring that the applicant possess a bachelor's degree and cites *Snapnames, supra*, *Grace Korean United Methodist Church v. Chertoff*, 437 F.Supp.2d 1174 (D.Or. 2005), and *Hoosier Care v. Chertoff*, 482 F.3d 987 (7th Cir. 2007), in support of this proposition. The court in *Grace Korean* like the court in *Snapnames*, discussed above, held that deference must be given to the employer's intent, however, that was in the context of the employer stating that it would accept a "bachelor's or equivalent." In those cases, the employers specifically indicated on the old Form 750 that a "bachelor's or equivalent" was required; the employers then provided evidence to demonstrate acceptable alternatives to a single source four-year degree. The petitioner in this case filed the labor certification on the new ETA Form 9089, which allows a labor certification applicant to designate any alternate combinations of education and experience. The petitioner here indicated that it required a bachelor's degree and provided no additional information in blocks 8, 9, or 14 on the Form 9089, Part H to indicate that it intended an alternate educational or experience level as opposed to the degree itself.⁹ USCIS may not ignore a term of the labor certification, which in this case is the petitioner's indication that a bachelor's degree is required for the position. *See Matter of Silver*

⁸ 20 C.F.R. § 656.17(f)(3) requires that the recruitment "provide a description of the vacancy specific enough to apprise the United States workers of the job opportunity for which certification is sought."

⁹ The petitioner argues that it said it would accept a "foreign educational equivalent." This refers to whether the petitioner will accept a foreign equivalent degree, as in a single foreign degree evaluated as a United States foreign equivalent, rather than a combined program of education and/or experience that the petitioner may alternatively set forth in Section H or enumerated in Section H, Question 14.

Irvine, Inc., 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc.*, 661 F.2d 1. Counsel's attempt to redefine the terms of the labor certification notwithstanding, the petitioner did not provide evidence of its intent during the job search to recruit accountants regardless of their education level, but instead submitted recruitment with varying experience requirements and no recruitment report.

On appeal, counsel states that the beneficiary's ability to be licensed as a Certified Public Accountant in California demonstrates that she has a foreign equivalent, single source degree in accounting at the U.S. bachelor's degree level. The rules governing California Certified Public Accountants allows for two "Pathways" for foreign applicants. The first Pathway requires "the equivalent of a U.S. baccalaureate degree with 20 units in accounting" plus three years of experience.¹⁰ The second Pathway requires that foreign applicants must demonstrate "a minimum of 150 semester units, or the equivalent from a foreign institution" and demonstrate one year of qualifying experience.¹¹ See <http://www.calcpa.org/Content/licensure/faq/foreign.aspx> (accessed September 22, 2009). Accordingly, to obtain a California CPA license, California will accept an equivalent degree rather than solely a bachelor's degree. No evidence was provided, however to show what standards are used by the California CPA licensing board in determining its equivalency to a U.S. bachelor's degree or that the standards used by the licensing board coincide with those requirements imposed under the immigration regulations.¹²

¹⁰ For U.S. applicants, the requirements for Pathway 1 are:

- A bachelor's degree;
- 24 semester units in accounting-related subjects;
- 24 semester units in business-related subjects (accounting courses beyond the 24 required units may apply toward the business units);
- Passing the Uniform CPA Exam;
- Two years of general accounting experience supervised by a CPA with an active license; and
- Passing an ethics course.

<http://www.calcpa.org/Content/licensure/requirements.aspx> (accessed September 22, 2009).

¹¹ For U.S. applicants, the requirements for Pathway 2 are:

- A bachelor's degree;
- 24 semester units in accounting-related subjects;
- 24 semester units in business-related subjects;
- 150 semester units (or 225 quarter units) of education;
- Passing the Uniform CPA Exam;
- One year of general accounting experience supervised by a CPA with an active license; and
- Passing an ethics course.

Id.

¹² Counsel also notes that "Chartered Accountant is a rank equivalent to a bachelor degree under [the North American Free Trade Agreement] NAFTA," however, that equivalency is in the context of a

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.

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.

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(1)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification). Although counsel is correct that post secondary education may be included in the 2 years of training or experience required for consideration as a “skilled worker,” the terms of the labor certification here, as discussed above, require the receipt of a bachelor’s degree, which the beneficiary does not have. As a result, the beneficiary cannot be classified as a “skilled worker” under the terms of this labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.

TN visa, the provisions of which do not apply here in an immigrant petition. See 8 C.F.R. § 214.6 (c). The petitioner was allowed to set forth an equivalency to a bachelor’s degree on the ETA Form 9089, however, it provided no such equivalency.