

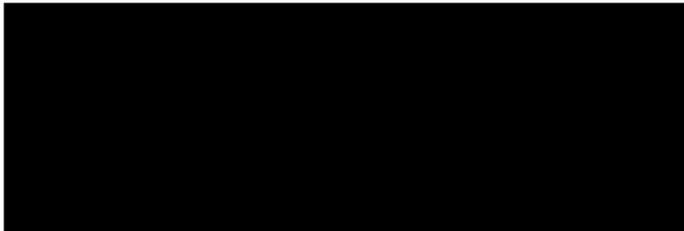
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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



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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: APR 07 2010
SRC 07 195 51234

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

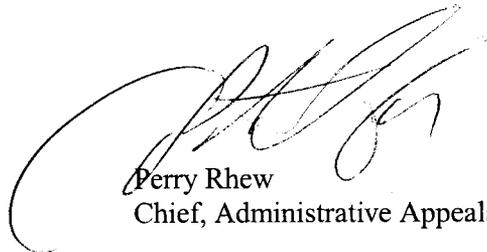
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 Rhew
Chief, Administrative Appeals Office

DISCUSSION: The 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 mining company of primary metals. It seeks to employ the beneficiary permanently in the United States as a support services manager. 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 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on February 20, 2007.³ The Immigrant Petition for Alien Worker (Form I-140) was filed on June 13, 2007.

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).

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

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 offer" position description for a support services manager provides:

The Support Services Manager position is responsible for the management and direction of [the petitioner's] Support Services Group that includes Help Desk Services, End User Support and Training, PeopleSoft implementations, project-related Sarbanes-Oxley compliance and IT Sarbanes-Oxley requirements. The position requires a bilingual individual in English and Spanish.

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 degree.

4-B. Major Field Study: Computer Information Systems.

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

The petitioner checked "no" to this question.

6. Experience: 60 months in the position offered.

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

The petitioner checked "yes" to this question.

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

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

Associate's degree.

8-C. If applicable, indicate the number of years experience acceptable in question 8: 6 years.

9. Is a foreign educational equivalent acceptable?

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

10. Is experience in an alternate occupation acceptable?

The petitioner checked no.

14. Specific skills or other requirements: Fluent in Spanish and English.

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 four years of college culminating in a Bachelor of Science degree in Computer Information Systems and five years of experience in the job offered or an Associate's degree with six years of 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 "Associate's." He listed the institution of study where that education was obtained as Universidad del Pacifico, Lima, Peru, and the year completed as 2002.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma from the University of the Pacific. It indicates that the beneficiary was awarded a diploma for Specialist in Administration of Finance and Control. The petitioner also submitted a copy of the beneficiary's Diploma in Administration and Support of Networks from Cibertec in 2001. The petitioner additionally submitted a credentials evaluation, dated June 15, 2006, from Jonatan Jelen of Morningside Evaluations. The evaluation describes the beneficiary's diploma from the University of the Pacific combined with the beneficiary's eight years of experience as equivalent to a U.S. Bachelor of Science degree in Computer Information Systems. A second

evaluation determined that the beneficiary had the equivalent of an Associate's degree in finance based on the same diploma.

The director denied the petition on October 1, 2007. He determined that the beneficiary's equivalent of an associate's degree in finance could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in computer information systems because the beneficiary's diploma, equivalent to an associate's degree, is in finance and not computer information systems.

DOL assigned the code of 11-3021.00, Computer & Information Systems Manager, to the proffered position. According to DOL's public online database at <http://online.onetcenter.org/link/summary/11-3021.00> (accessed November 10, 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. 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 id.* Additionally, DOL states the following concerning the training and overall experience required for these occupations:

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

See id. 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.

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.

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.

On August 9, 2007, the director issued a request for evidence to the petitioner. In this request, the director noted that there was no evidence in the record of proceeding that the beneficiary ever enrolled in classes beyond the academic studies at the University of the Pacific. In response to the RFE, the petitioner submitted a statement asserting that it was the petitioner's intent for the ETA 9089 to require a bachelor's degree in computer information systems but that the associate's degree could be in any field to qualify to meet the terms of the labor certification. The petitioner also submitted copies of the advertisements to demonstrate recruitment conducted for the position.

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 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

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

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).

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).

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.

As stated above, the ETA Form 9089 states that the job requirements are a bachelor's degree in computer information systems plus five years of experience in the job offered or an associate's degree plus six years of experience in the job offered. In response to question 7, Part H of the ETA Form 9089, the petitioner indicated that no alternate field of study would be acceptable. The

beneficiary's diploma, evaluated as the equivalent of an associate's degree, is in finance, not computer information systems. The petitioner submitted two evaluations, the first evaluation from [REDACTED] concludes that the beneficiary holds the equivalent of a bachelor's degree in computer information systems based upon the beneficiary's experience combined with the beneficiary's education. This evaluation seems to use the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). The labor certification was not drafted or certified to allow the beneficiary to qualify based on a combination of education and experience to meet the bachelor's degree requirement. Even if [REDACTED] evaluation were accepted, the use of the beneficiary's years of experience in furtherance of the bachelor's degree means that the beneficiary would have no additional documented experience to meet the additional five years of experience required by the full terms of the labor certification. We may not double count the years of experience towards both the equivalency and the experience required by the labor certification. As such, only the beneficiary's associate's degree is relevant to whether he met the terms of the labor certification. The issue is whether the labor certification requires the associate's degree to be in CIS or whether it can be in "any field" as the petitioner asserts.

In his brief on appeal, counsel explains that the petitioner viewed the associate's degree plus six years of experience "to be the equivalent of a Bachelor's degree in Computer Information Systems" and that the ETA Form 9089 does not have a space to designate the field of study for the associate's degree like the blank found at Part H, part 4-B for the bachelor's degree. Counsel explains that the answer to question 7, Part H only related to the bachelor's degree because the experience required for the associate's degree in the field would make the degree equivalent to a bachelor's degree in the computer information system field. Although a specific blank is not provided for the educational field of study, ample room is provided on the Form 9089 for the petitioner to specify what it intends. For example, block 14 of Part H provides a general blank entitled "specific skills or other requirements" that could have been used or block 8-B could have been used as it offers a space for modifying the answer to block 8-A (albeit specifically indicated for use when "other" is checked in block 8-A although presumably this would allow the petitioner to designate "other" – associate's in finance or degree field. However, this was not done). Nothing on the ETA Form 9089 states that the petitioner would allow a candidate to qualify with an associate's degree in "any field." The petitioner attempts to have Part H read as a non-cohesive statement about what is required for the job, however, nothing on the Form 9089 indicates that block 7, 9, 10, 11, 12, 13, or 14 would apply only to the answer given in block 4 or in block 8. Instead, those blocks all contain general questions that apply, on their face, to the job in general.⁶

⁶ The instructions for labor certifications found on the DOL website state as follows:

Section H

Job Opportunity Information

4. Select the minimum level of education required to adequately perform the duties of the job being offered.
 - 4-A. If *Other* was selected for question 4, identify the education required.

Furthermore, the advertisements for the position do not set forth the same requirements as those found on the labor certification. The job advertisements that appeared in the local newspaper and on greathires.org fail to state the full position requirements, but instead state that a “Bachelors degree or equivalent experience” is required and does not state the labor certification requirement that five years of experience is required or alternatively that an applicant could qualify for the position offered based on an associate’s degree in any field and six years of experience. The advertisement

Examples are MD and JD.

4-B. Enter the major field of study required in reference to Question 4. Skip this question if the answer to question 4 is *None or High School*.

6. Select *Yes* or *No* to identify whether experience in the job offered is a requirement.

6-A. If the answer to question 6 is *Yes*, enter the number of months experience that are required for the job.

7. Select *Yes* or *No* to indicate if an alternate field of study is acceptable. This field of study is alternate to the major field of study indicated in question 4-B.

7-A. If the answer to question 7 is *Yes*, enter the alternate field of study that is acceptable for the job offered.

8. *Select Yes or No to indicate if there is an alternate combination of education and experience in the job offered that will be accepted in lieu of the minimum education requirement identified in question 4 of this section. For example, if the requirement is bachelors + 2 years experience but the employer will accept a masters + 1 year experience, an alternate combination of education and experience exists.*

8-A. If the answer to question 8 is *Yes*, select the alternate level of education that is acceptable in combination with the number of months of experience specified in question 8-C.

8-B. If the answer to question 8-A is *Other*, enter the alternate level of education that is acceptable.

8-C. If the answer to question 8 is *Yes*, enter the number of months of experience in the job offered that is acceptable in combination with the level of education specified in question 8-A.

that appeared on Yahoo Hot Jobs states that a “Bachelors degree or equivalent experience” is required in addition to 5-10 years of experience, which is substantially different and higher than the terms of the labor certification. None of the three advertisements mentions that an associate’s degree in any field would be acceptable or state what constitutes the equivalent to a bachelor’s degree. Additionally, the advertisements all require that the applicant be bilingual or fluent in “Peruvian Spanish” as opposed to just “Spanish” listed on the labor certification. None of these advertisements contain job requirements that match the requirements contained on the labor certification, or that counsel argues should be accepted on appeal. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The beneficiary does not have a four-year bachelor’s degree and the required documented five years of experience in the position offered. Also, the labor certification cannot be read that the job requires an associate’s degree in any field. 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). Therefore, the beneficiary does not meet the terms of the labor certification as he does not have the education required to meet the terms of the position offered and the petition cannot be approved as either a professional or a skilled worker.

In addition to the above, no evidence appears in the record that the beneficiary obtained the requisite experience prior to the filing of the Form I-140. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff’d*. 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis). 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).

The regulation at 8 C.F.R. § 204.5(1)(3)(ii) specifies for the classification of a skilled worker that:

(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

(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.

The ETA Form 9089 requires five years of experience in the job offered with a bachelor's degree [or six years of experience based on an associate's degree] and does not provide for experience in any related occupation. To document the beneficiary's experience, the petitioner submitted a letter from [REDACTED], which states that the beneficiary worked for the now defunct company of STS as the training coordinator from September 1990 to March 2003. Although this position was in the IT field, it is not the same position as that specified by the labor certification. The labor certification requires managing and directing, operational support and training end users to include Help Desk Services, End User Support, and Training. The work that the beneficiary did for STS was described by [REDACTED] as being only training. The petitioner also submitted a letter from [REDACTED] which states that the beneficiary worked for [REDACTED] from October 1992 to April 1996 as a programmer. This letter does not contain the title for [REDACTED] nor does it contain a job description of the work that the beneficiary did for that company as required by 8 C.F.R. § 204.5(l)(3)(ii)(A). The letter submitted from [REDACTED] the successor to [REDACTED] also verified the beneficiary's employment with the [REDACTED] from October 1992 to April 1996 as a programmer. That letter contains details of the beneficiary's position with the company including evidence that the beneficiary led training exercises and provided support services for company employees. The letter from [REDACTED] states that the beneficiary worked with [REDACTED] from May 1996 to February 1998 as a technician assistant. This letter does not contain a job description of the work performed by the beneficiary nor does it specify [REDACTED] position with the company. The letter from [REDACTED] with [REDACTED] also verified the beneficiary's employment with [REDACTED] from May 1996 to February 1998 and states that the beneficiary provided technical and administrative support and implemented the internal computer network. This letter does not mention that the beneficiary had any training responsibilities. None of the letters confirm that the beneficiary was employed as a Support Services Manager and had the requisite five years of experience in the position offered [or six years based on an associate's degree]. The petitioner did not allow the candidate to qualify based on other alternate or related experience, such as a related occupation as a technician assistant or a programmer. As a result, we are unable to conclude that the beneficiary had the requisite experience in the job offered at the time that this petition was filed.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.