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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]
LIN 07 009 53003

Office: NEBRASKA SERVICE CENTER

Date: **APR 12 2010**

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, 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 computerized aircraft maintenance and inspection company. It seeks to employ the beneficiary permanently in the United States as a technical product manager. As required by statute, an ETA Form 750, Application for Alien 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 750 was accepted for processing on August 21, 2003.³ The Immigrant Petition for Alien Worker (Form I-140) was filed on October 10, 2006.

The job qualifications for the certified position of technical product manager are found on Form ETA-750 Part A. Item 13 describes the job duties to be performed as follows:

Coordinates technical liaison services between management, product department, sales department and customer in conjunction with the development or enhancement of one or more on-line software and e-commerce products delivering computerized management systems to the business aviation industry. Confers with customers to define the system requirements and end-uses. Translates customer requests into software system specifications. Prepares timelines for product development and communicates to the Programmer Analysts who are developing or enhancing the product. Tells them what should be done, how long it should take to complete, and how it should work. Provides marketing, pre-sales and sales support for the product. Prepares documentation and training materials[.]

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	[none specified]
High school	[none specified]
College	[none specified]
College Degree Required	BS
Major Field of Study	Aeronautical Engineering, Business Aeronautic Engineering, or similar

Experience:

Job Offered (or) Related Occupation	1 year 1 year: Aviation industry duties involving aircraft maintenance & maintenance mgm't systems
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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.

Block 15: Other Special Requirements [none specified].

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 of Science degree in aeronautical engineering, business aeronautic engineering, or a similar field. The terms of the labor certification also require one year experience in the job offered or one year in the designated related occupation.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's Completion Certificate from the Aeronautical Society of India. The petitioner also submitted the mark sheet from the associate membership examination for the Aeronautical Society of India and a certificate from the Civil Aviation Department of the Government of India certifying the beneficiary in light aircraft maintenance engineering and a certificate from the School of Aviation Science & Technology in aircraft maintenance engineering. It indicates that the beneficiary is a member of the Aeronautical Society of India. On the Form ETA 750B, the beneficiary indicated that he holds a bachelor's degree from the Aeronautical Society of India.⁴ The petitioner did not submit any document to show that the beneficiary has a bachelor's degree.

In support of the beneficiary's education qualifications, the petitioner submitted credential evaluations from [REDACTED]

[REDACTED] Both evaluators concluded that the beneficiary has the "equivalent of" a four-year U.S. Bachelor of Science degree in aeronautical engineering.⁵

The director denied the petition on June 6, 2007. He determined that the beneficiary's qualification as a member in the Aeronautical Society of India was not a bachelor's degree as required by the

⁴ The beneficiary also indicated on the Form ETA 750 that he holds a post graduate diploma from the Indian Education Center in Computer Applications, a Certificate from the School of Aviation Science & Technology in Aircraft Maintenance, completed undergraduate studies at Kendriya Vidhyalya in Higher Secondary Education (presumably high school studies), and a certification from UAL Training Center in Flight Engineering.

⁵ The petitioner submitted a third evaluation. This appears to be an evaluation of Associate membership in the Aeronautical Society generally. The evaluation lists a different individual and does not assess the beneficiary's educational documents.

labor certification and that the evidence in the record suggested that membership in the Society is contingent upon education and experience so could not be considered a foreign equivalent to a bachelor's degree.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel stated that the director erred in finding that the beneficiary's membership in the Aeronautical Society of India was not a foreign equivalent degree to a U.S. bachelor's degree.

DOL assigned the code of 41-9031, "sales engineer," to the proffered position. According to DOL's public online database at <http://online.onetcenter.org/link/summary/41-9031.00> (accessed November 20, 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 November 20, 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(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.

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).⁶ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

* * *

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the

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

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).⁷

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).

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

⁷ 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).

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 of science degree.⁸ 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 750 does not specify an equivalency to the requirement of a Bachelor of Science 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

⁸ A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

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.

The information in the record on appeal indicates that the beneficiary is an associate member of the Aeronautical Society of India. The beneficiary achieved this membership through examinations in March 1995. A letter from [REDACTED] of India states that “a pass [of the Associate Membership Examination in Sections A & B] has been recognized by the Central Government, in the Ministry of Education, Government of India . . . as being equivalent to a degree in Aeronautical Engineering from an Indian University.” Counsel asserts that the new ETA Form 9089 allows a petitioner to set forth an equivalent but that the Form ETA 750 does not. Contrary to counsel’s assertion, Block 14’s space for “College Degree Required” contains ample room for the petitioner to specify, for example, “BS or equivalent” similar to the “or similar” specified under “Major Field of Study.” In addition, Block 15, titled “Other Special Requirements,” which the petitioner in this case left blank, provides more than sufficient space to define and set forth any allowed equivalency to a bachelor’s degree. The petitioner did not do so. No Bachelor of Science degree appears in the record and, except for the representation made on Form ETA 750B, the beneficiary does not claim to hold a bachelor’s degree.

The credential evaluations from [REDACTED] and [REDACTED] also state that the beneficiary holds the equivalent of a bachelor’s degree. [REDACTED]’s evaluation states that an Associate Membership in the Aeronautical Society of India “is the *functional* equivalent of a bachelor’s degree in aeronautical engineering technology from an accredited college or university in the United States.” The Glover evaluation bases his conclusion on the Associate Membership Examination and completion of Section A & B exams. The term “functional equivalent” specifically modifies and distinguishes the beneficiary’s credential from a bachelor’s degree. [REDACTED] notes the beneficiary’s certificate from the School of Aviation Science & Technology and evidence of other three and one-half years of training received by the beneficiary from July 1991 to December 1994. [REDACTED] qualified the equivalency evaluation as “functional.”

The evaluation from [REDACTED] states that the beneficiary passed Sections A & B of the Aeronautical Society of India examinations on March 9, 1995. He notes that associate membership in the Aeronautical Society of India is recognized by the Indian Ministry of Education to be equivalent to a Bachelor of Aeronautical Engineering and would also be the equivalent of a bachelor’s degree earned at a United States institution. The evaluation considers other training certificates and concludes that these certificates represent “vocational study or professional qualifications that do not represent additional credit-bearing undergraduate or graduate study.” [REDACTED]’s conclusion that the beneficiary “has the equivalent of the U.S. degree of Bachelor of Science in Aeronautical Engineering earned at a regionally accredited institution of higher education in the United States” is based on passage of the exams rather than a four-year degree program required to qualify as a professional.

The petitioner also presented evidence that the beneficiary was accepted into a Master's program at Long Island University and Dowling College. The Universities' decision to accept the beneficiary into its Master's program indicates only that the schools felt that the beneficiary was adequately prepared for the program, not that he possessed any one educational single-source, four-year degree the foreign equivalent to a United States bachelor's degree as required by the terms of the labor certification. It is unclear from the letters whether the beneficiary's admissions to these programs were "unconditional" or predicated on completion of any additional educational requirements prior to admission.

Additionally, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁹ 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 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 membership in the Aeronautical Society of India is "comparable to a bachelors degree in the United States" and that membership is "[e]arned after the completion of 20 examinations, Part A and B."

The information on the Aeronautical Society of India's webpage states that:

Associate Members shall have passed the Associate Membership Examination of the Society or any other examination acceptable to the Council as of a equivalent standard, including a degree in engineering in any discipline and shall have been engaged, in addition to the period of training, for at least 2 years in the profession of aeronautics or in other special scientific or technical work applied to aeronautics including work connected with aircraft engineering or operations or post-graduate

⁹ 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.

studies in engineering.

See <http://www.aesi-hyd.com/gen-info.htm> (accessed March 2, 2010). This explanation of the requirements for membership does not establish that the Society is an educational facility or that the Society is qualified to issue an educational degree as opposed to administering examinations. Instead, the explanation makes clear that Associate Membership is based on passing exams and additional related experience.

The Form ETA 750 does not provide that the minimum academic requirements of a Bachelor of Science degree in aeronautical engineering, business aeronautic engineering, or similar might be met through any defined equivalency to a bachelor's degree or through a combination of education and experience, or based on anything less than a single-source four-year degree.¹⁰ The petitioner did not set forth any alternates to its statement that a bachelor of science degree was required for the position anywhere on the Form ETA 750, including but not limited to, in Block 15 which it left blank. Block 15 allows more than sufficient space to set forth any educational equivalency.

The AAO reviewed the recruitment materials provided in response to the Request for Evidence ("RFE"), issued by this office on August 10, 2009, in order to determine the petitioner's intent. The letter from [REDACTED] of human resources for the petitioner, states that the petitioner reviewed 316 resumes previously submitted to the company, but none of those applicants "met [the] minimum requirements for the job." [REDACTED] then stated that the petitioner advertised the position in *Newsday* and on America's Job Bank as well as on the petitioner's website and internal server; the company received 18 inquiries about the position. [REDACTED] stated that only one of the 18 appeared to be qualified for the position, but that applicant was not interested in the position if the company did not pay relocation expenses, which the petitioner declined to do. [REDACTED] stated that the petitioner spoke with all of the applicants but "[n]o one met [the] minimum education and experience requirements and therefore would have been unable to perform the duties of the job."

¹⁰ On appeal, counsel states that the beneficiary's membership in the Aeronautical Society of India is the foreign equivalent to a U.S. bachelor's degree and that the beneficiary has had H-1B petitions approved on his behalf, which counsel asserts shows he has a bachelor's degree. We note that the evaluation of credentials differs for an immigrant petition and a H-1B petition. See 8 C.F.R. § 214.2(h)(4)(iii)(c)(4). The H-1B regulations allow a beneficiary to meet the bachelor's degree requirement if they "have education, specialized training, and/or progressively responsible training that is equivalent to completion of a United States baccalaureate or higher degree in the specialty occupation." See also 8 C.F.R. § 214.2(h)(4)(iii)(D)(4). Thus, a previous determination that the beneficiary qualifies for an H-1B visa is irrelevant to the discussion as to whether the beneficiary qualifies for the instant immigrant petition. While membership in the Aeronautical Society of India is "equivalent" to a U.S. bachelor's degree, it is not a foreign equivalent degree. The issue here is whether the beneficiary meets the terms of the labor certification as certified. The labor certification was not drafted or certified to include any "equivalent" alternatives to a four-year, single-source bachelor's degree.

letter did not specify how the applicants were unqualified for the position, whether those candidates that the petitioner considered had sufficient work experience or combined education to reach a bachelor's degree based on any equivalency theory, or what that equivalency would be. The record does not contain any further information about how these applicants were not qualified.

The job advertisements provided, posted internally with the petitioner, stated that the education requirement was a "Bachelor's Degree in Aeronautical Engineering, Business Aeronautics Engineering or similar." The job advertisements provided, published in *Newsday* and *newsday.com*, do not contain any educational requirements, but instead state that the applicant should have "experience in aircraft maintenance and maintenance management systems for aviation industry." The job advertisements, provided on America's Job Bank, state that a Bachelors Degree is required for the position. The copies of the newspaper advertisements advertise for a technical product manager 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.¹¹ The other advertisements state that a bachelor's degree is required for the position. Those advertisements apprise U.S. worker applicants that the minimum requirement for the position is a bachelor's degree and that only those who hold a bachelor's degree would be qualified for the position. The petitioner does not state or define any acceptable equivalency. The petitioner did not submit all of the evidence of its recruitment effort in that it did not submit a recruitment report summarizing applicants, candidates' resumes, and the reasons for their disqualification for the position or any correspondence with DOL clarifying the degree requirement.

On appeal, counsel argues that if "something is 'equivalent' to something else, the two items are interchangeable" so that the beneficiary's membership in the Aeronautical Society of India should be "interchangeable" with the labor certification requirement of a bachelor's degree. As stated above, 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. at 406; *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.*, 661 F.2d 1. The courts in *Grace Korean* and *Snapnames*, discussed above, held that deference must be given to the employer's intent, however, the petitioner has submitted no evidence demonstrating that its intent was to accept anything other than a bachelor's degree as appropriate for the position. The petitioner did not indicate on the Form ETA 750 that an "equivalent" would be accepted nor did it indicate in its job advertisements that anything other than a bachelor's degree would be accepted. We may not ignore this requirement included by the petitioner on its labor certification. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. at 406. *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.*, 661 F.2d 1. Counsel states that the language "or similar" found on the ETA Form 750, block 14 indicates the petitioner's willingness to accept credentials other than bachelor's degrees. The phrase

¹¹ 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."

“or similar” is at the end of the petitioner’s response to the question of what field of study would be acceptable, i.e. “Aeronautical Engineering, Business Aeronautic Engineering, or similar.” The “or similar” phrase modifies the field of study acceptable to the petitioner, not the overall education qualification. Logically, had the petitioner intended the “or similar” phrase to indicate the type of education requirement acceptable for the position, it would have stated “BS or similar equivalent credential” or “BS or equivalent” in the block reserved for “college degree required.” Alternatively, Block 15 allowed more than sufficient space for the petitioner to set forth any defined equivalency to a bachelor’s degree. Instead, the petitioner specified “BS” as the only acceptable educational requirement.¹² We are bound by what the petitioner provides on the labor certification.

The beneficiary does not have a four-year single source foreign equivalency degree issued by a college or university or a United States baccalaureate degree and, thus, does not qualify for preference visa classification as a professional 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). The labor certification only allows an applicant to qualify if they have a four-year, single-source bachelor’s degree in the required field. The beneficiary does not have such a bachelor’s degree. Instead, the beneficiary has the “equivalent” of a bachelor’s degree. The labor certification was not drafted or certified to allow a candidate to qualify based on any equivalent education. The petitioner did not demonstrate that it allowed for any defined equivalency to a bachelor’s degree in its recruitment. 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.

¹² Counsel states in the appellate brief that the situation in *Grace Korean* is similar. In *Grace Korean*, the petitioner stated a “B.A. or equivalent” were the minimum educational requirements for the position. As noted, this case does not have similar language as the petition fails to designate that an equivalent degree would be accepted and instead states that only a “BS” would be accepted.

ORDER: The appeal is dismissed.