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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:

LIN 07 022 53903

Office: NEBRASKA SERVICE CENTER

Date: **APR 12 2010**

IN RE:

Petitioner:
Beneficiary:

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:

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 programmer analyst. As required by statute, a Form ETA 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 Form ETA 750 was accepted for processing on June 16, 2003.³ The Immigrant Petition for Alien Worker (Form I-140) was filed on October 30, 2006.

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

Analysis, design, planning, implementation and maintenance of CAMP System International Client server and web-based on-line information service for business aviation maintenance management, inventory control and flight scheduling. Analyze business aviation processes, requirements, and procedures to design and implement computer systems and improve existing systems. Design, develop, and test codes for client server and web-based software products; monitor the products in the field; fix identified errors and problems using Visual Basic, ASP, HTML, COM, Oracle PL/SQL, SQL, Windows and Unix Servers and other technologies. Write documentation to describe program development, testing and correction by creating diagrams, flow charts, screens and reports. Participate in the research and evaluation of new technologies and opportunities in the aviation industry. Work under close supervision.

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	4
College Degree Required	BS
Major Field of Study	Computer Science, Mechanical Eng. or equivalent

Experience:

Job Offered	2 years
(or)	
Related Occupation	2 years: related duties

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: Section 14 experience must include at least six months on the job experience with the design, development and maintenance of web-based on line software and e-commerce applications for the aviation industry.

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 of Science degree in computer science, mechanical engineering, or an equivalent field. The terms of the labor certification also require two years experience in the job offered.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's Bachelor of Science degree in Mathematics from Manonmaniam Sundarnar University in Tirunelveli, India and a Diploma in Programming and Application and Honors Diploma in Information Systems earned concurrently with his three-year bachelor's degree from the National Centre for Information Technology from Aptech Computer Education. The petitioner also submitted the mark statements for the beneficiary's foreign bachelor's degree and diploma.

In support of the beneficiary's education qualifications, the petitioner submitted a credential evaluation from [REDACTED] a professor at the University of Oklahoma. [REDACTED] concluded that the beneficiary has the "equivalent to a bachelor's degree from an accredited university in the United States." [REDACTED] concluded that the beneficiary's Bachelor of Science in Mathematics and a minor in computer science was equivalent to three years of university study in the United States and that the beneficiary's honours diploma in computer programming and applications was equivalent to one year of university study, for a total of four years of university study at a U.S. institution. [REDACTED] does not include any criteria for how he determined the equivalencies.

The director denied the petition on June 6, 2007. He determined that the beneficiary's three-year bachelor's degree was not equal to a four-year U.S. bachelor's degree and that the labor certification did not indicate that a combination of degrees would be accepted in lieu of one 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 education was not equivalent to a four-year bachelor's degree and that the director erred in not finding that the labor certification allowed an equivalent degree or combination of degrees as the minimum requirement for the position.

DOL assigned the occupational code of 030.162-014 on the Form ETA 750 which translates to category 15-1031.00, software applications engineers, in the DOL's online database. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/link/summary/15-1031.00> (accessed February 8, 2010) 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/15-1031.00#JobZone> (accessed February 8, 2010). 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.

The regulation at 8 C.F.R. 204(5)(l)(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 5, 2009, the AAO issued a request for evidence to the petitioner. In this request, the AAO noted that there was no evidence in the record of proceeding that the beneficiary ever enrolled in classes beyond the academic studies at Manonmaniam Sundaranar University.⁴ The AAO also noted that the petitioner did not specify on the ETA Form 750 that the minimum academic requirements of four years of college and a bachelor's of science degree might be met through a combination of lesser degrees and/or a quantifiable amount of work experience. The AAO further advised that according to the American Association of Collegiate Registrars and Admissions Officer's (AACRAO) EDGE database, a bachelor's degree from India is equivalent to three years of undergraduate study in the United States and that the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually less than a single-source U.S. bachelor's degree or its foreign equivalent and/or a quantifiable amount of work experience when the labor market test was conducted.

In response to the request for evidence, counsel submits position advertisements placed in local media and on the internet, in-house position posting, and other recruitment information.

⁴ On appeal, the petitioner submitted evidence that the beneficiary pursued a Master's degree from Polytechnic University in New York. The beneficiary began those studies in the fall of 2004 and received a Master's degree in computer science on June 3, 2007. This degree is irrelevant to the instant proceedings as his studies began, and it was earned after the June 16, 2003 priority date. See *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).

As noted above, the Form ETA 750 in this matter is certified by DOL. Thus, at the outset, it is useful to discuss DOL's role in this process. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by Federal Circuit Courts.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).⁵ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

* * *

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

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

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). **The INS then makes its own determination of the alien's entitlement to sixth preference status.** *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, in contrast to counsel's contention on appeal, it is DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of USCIS to determine if the petition and the alien beneficiary are eligible for the classification sought.⁶ For classification as a member of the

⁶ Counsel argues on appeal that the DOL must be deemed to have "done its job properly" in certifying the labor certification, knowing the credentials possessed by the beneficiary. However,

professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien have a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation requires the submission of “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.”

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 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. 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 beneficiary does not have a four-year, single-source 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

even though the beneficiary’s credentials were stated on Form ETA 750B, the DOL’s role is not to examine whether the beneficiary meets the terms of the labor certification. It is USCIS’s role to determine whether the particular beneficiary meets the stated terms.

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 advised in the request for evidence issued to the petitioner by this office, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁷ According to its website,

⁷ 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.

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](http://www.aacrao.org/publications/guide%20to%20creating%20international%20publications.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 a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor’s degree “represents attainment of a level of education comparable to a bachelor’s degree in the United States.” The “Advice to Author Notes,” however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor’s degree.

The record does not contain evidence that Aptech is a qualified AICTE approved postgraduate diploma program. The beneficiary’s diploma from Aptech was earned from a non-accredited institution concurrently while the beneficiary completed his three-year bachelor’s degree, and not after he completed his three-year foreign degree.

The Form ETA 750 does not expressly define any stated alternatives to the minimum academic requirements of four years of college and a Bachelor of Science degree in computer science, mechanical engineering, or equivalent field of study. As stated above, the credential evaluation in the record states that the combination of his three-year Indian bachelor’s degree in mathematics and concurrently earned diploma from a non-AICTE approved institution is the equivalent to a U.S. bachelor’s degree, not that either the degree or the diploma, standing alone is the foreign equivalent to a U.S. bachelor’s degree on its own. As the beneficiary’s additional education is from Aptech, a

non-AICTE approved institution,⁸ there are insufficient controls over the course work to determine the academic merit, if any, of its U.S. equivalency. Therefore, the evaluation which assesses one-year of academic value to the beneficiary's Aptech education is in question. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988); *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). The petitioner did not set forth any alternate requirements 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 only contained specifics about the experience required. Instead, counsel argues that the information contained in Block 14 in the space for "Major Field of Study" indicated its intention to accept equivalents to a U.S. baccalaureate degree.⁹ Had the petitioner intended an alternate degree or combination of degrees to be acceptable, it could have set forth that information in block 15.¹⁰

⁸ Based on a review of the All India Council for Technical Education <http://www.nba-aicte.ernet.in/nmna.htm> site, accessed on March 2, 2010, Aptech, India, is not an accredited institution within Tirunelveli, Tamil Nadu, India.

⁹ As stated above, the petitioner wrote in the "Major Field of Study" block that a degree in "Computer Science, Mechanical Eng. or equivalent [field]" was required. The U.S. Department of Labor (DOL) has provided the following field guidance: when the Form ETA 750 indicates, for example, that a "bachelor's degree in computer science" is required, and the beneficiary has a four-year bachelor's degree in computer science from the University of Florence, "there is no requirement that the employer include 'or equivalent' after the degree requirement" on the Form ETA 750 or in its advertisement and recruitment efforts. See Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). Further, where the Form ETA 750 indicates that a "U.S. bachelor's degree or the equivalent" may qualify an applicant for a position, where no specific terms are set out on the Form ETA 750 or in the employer's recruitment efforts to define the term "equivalent", "we understand [equivalent] to mean the employer is willing to accept an equivalent foreign degree." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). Where the Form ETA 750 indicates, for example, that work experience or a certain combination of lesser diplomas or degrees may be substituted for a bachelor's degree, "the employer must specifically state on the ETA 750, Part A as well as throughout all phase of recruitment exactly what will be considered equivalent or alternative [to the degree] in order to qualify for the job." See Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). State Employment Security Agencies (SESAs) should "request the employer provide the specifics of what is meant when the word 'equivalent' is used." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung,

In response to the AAO's RFE, the petitioner submitted its recruitment materials. The copies of the notice(s) of Internet and newspaper advertisements, provided with the petitioner's response to the request for evidence issued by this office, also fail to advise any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. The job advertisements placed in "Newsday" do not contain any educational requirements. These advertisements are not specific enough to indicate the petitioner's intent regarding the educational requirements of the position.¹¹ The advertisements fail to state the position requirements of a bachelor's degree plus two years of experience and six months of highly specific skills to adequately put applicants on notice of the position requirements. The job advertisement on New York's Job Bank states the "Education" required as "Bachelor's Degree" and notes that the "Required Degree/Formal Training" is "BS Computer Science or related deg." This advertisement appries 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 notice posted at the petitioner's office stated that the education requirements for the position are "Bachelor's Degree in Computer Science, Mechanical Engineering or equivalent degree." The petitioner did not submit all of the evidence of its recruitment efforts. Specifically, it did not submit a recruitment report attaching resumes received or any correspondence with DOL clarifying the degree requirement. The filing letter that the petitioner submitted to DOL states, "for this position, we require at least a Bachelor's Degree in Computer Science, Mechanical Engineering, or a related degree and two years experience as a Programmer Analyst." The petitioner does not express, state, or define to DOL any equivalency that it would accept in lieu of a Bachelor's degree.

In support of the petitioner's position on appeal, counsel cites an unpublished decision of the AAO dated June 14, 2007. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

Esq., Jackson & Hertogs (March 9, 1993). Finally, DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [U.S. Citizenship and Immigration Services (USCIS)] to accept the employer's definition." *Id.* To our knowledge, the field guidance memoranda referred to here have not been rescinded.

¹⁰ As stated above, the petitioner wrote in block 15: "Section 14 experience must include at least six months on the job experience with the design, development and maintenance of web-based on line software and e-commerce applications for the aviation industry."

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."

Similarly, counsel cites the decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that USCIS “does not have the authority or expertise to impose its strained definition of ‘B.A. or equivalent’ on that term as set forth in the labor certification.” In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church*, 437 F. Supp. 2d at 1179 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a); *but see 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).

The petitioner also presented evidence that the beneficiary was accepted into a Master’s program and completed studies at Polytechnic University in New York and asserts therefore the beneficiary’s education would be recognized as a bachelor’s degree. The University’s decision to accept the beneficiary into its Master’s program indicates only that the school felt that the beneficiary was adequately prepared for the program, not that his Indian bachelor’s degree is equivalent to a U.S. bachelor’s degree. No evidence was provided to show that the University accepted the beneficiary without requiring additional courses or experience in the field.

The beneficiary cannot be approved under the professional category as he does not meet the terms of the labor certification since he does not have a single-source, four-year bachelor’s degree in computer science or mechanical engineering; therefore, this petition must be denied.¹² Additionally, the petitioner has failed to demonstrate that the beneficiary would qualify for consideration as a skilled worker. *See* 8 C.F.R. § 204.5(I)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification). The beneficiary does not have four years of college education as stated on the labor certification. The record instead demonstrates that the beneficiary has a three-year degree, which is not the foreign equivalent to a U.S. Bachelor’s degree. As the beneficiary’s additional “diploma” is from a non-AICTE approved school, there are insufficient controls over the course work to determine the academic merit or any U.S. equivalency. Therefore, the evaluation that concludes that the beneficiary’s education is equivalent to a bachelor’s degree is also in question. *Matter of Ho*, 19

¹² A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

I&N Dec. 582, 591-592 (BIA 1988) (“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.”). As a result, the petitioner has not sufficiently demonstrated that the beneficiary has the equivalent of a bachelor’s degree, or that it expressed its intent to DOL or potentially qualified U.S. workers that it would accept any defined equivalency to a bachelor’s degree. Therefore, the beneficiary cannot be classified as a “skilled worker” or “professional” 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.