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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]
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Office: NEBRASKA SERVICE CENTER

Date: FEB 05 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. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to provide information technology services. It seeks to permanently employ the beneficiary in the United States as a project manager. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹ The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

As set forth in the director's March 23, 2007 denial, at issue on appeal is whether the beneficiary possesses the minimum education required to perform the offered position as set forth in the labor certification.

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b); *see also Janka v. U.S. Dept. of Transp.*, 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). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

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-

¹Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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. 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

²The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 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).

(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).³ *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:

[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.

³Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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).

In summary, it is DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of U.S. Citizenship and Immigration Services (USCIS) to determine if the petition and the alien beneficiary are eligible for the classification sought.

Accordingly, in order to obtain classification in the requested employment-based preference category, the petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. at 159; *see also Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). In the instant case, the priority date is August 5, 2002, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). In evaluating the requirements for the offered position, USCIS must look to the job offer portion of the labor certification. 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, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*,

699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1st Cir. 1981).

The required education, training, experience and special requirements for the offered position are set forth at Part A, Items 14 and 15, of Form ETA 750. In the instant case, the labor certification states that the position has the following minimum requirements:

Education: "Bachelors or equivalent" in computer science, engineering, or a related field of study.

Training: None required.

Experience: Two years of experience in the job offered or in any computer professional position with at least one year working with data warehousing tools.

Other Special Requirements: None.

The record contains the following academic credentials for the beneficiary:

- transcripts and diploma for a three-year bachelor of science degree in computer science from Bharathiar University, India;
- transcripts and diploma for a higher diploma in software engineering from Aptech Computer Education, India; and
- transcripts and diploma for a two-year postgraduate diploma in management (dual specialization) from Symbiosis Institute of Management Studies, India.

The record also contains an academic credentials evaluation from [REDACTED] of The Trustforte Corporation, dated December 21, 1999. The evaluation states that that the combination of the beneficiary's three-year bachelor of science degree, higher diploma, and postgraduate diploma is equivalent to a four-year U.S. bachelor of science degree in computer science.

The record of proceeding forwarded to the AAO did not contain sufficient evidence to establish that the beneficiary possessed a bachelor's degree or foreign equivalent degree as required by the labor certification.⁴ Instead, the academic credentials evaluation in the record claimed that the beneficiary possessed a combination of education equivalent to a bachelor's degree.

Due to the ambiguity of the evidence in the record, the AAO consulted the Electronic Database for Global Education (EDGE). EDGE provides a great deal of information about the educational system

⁴The labor certification states that the offered position requires a "Bachelors or equivalent" degree. As is explained below at footnote 10, *infra*, the AAO interprets this phrase as requiring a four-year U.S. bachelor's degree or a single foreign equivalent degree. There was no evidence in the record forwarded to the AAO to establish that the educational requirements set forth on the labor certification could have been met by a combination of lesser degrees or a combination of education and work experience.

in India.⁵ It discusses postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides 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."⁶ However, the "Advice to Author Notes" provides:⁷

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.

Given the deficiency of the evidence in the record, on August 10, 2009, the AAO issued a request for evidence (RFE) soliciting evidence that the beneficiary possesses a U.S. bachelor's degree or foreign equivalent degree in computer science, engineering, or a related field of study. The RFE specifically instructed the petitioner to provide an academic credentials evaluation that addressed whether the Symbiosis Institute of Management Studies is an accredited university or institution approved by the AICTE, and whether a three-year bachelor's degree is required for admission into its postgraduate diploma in management program. The RFE also instructed the petitioner to provide any evidence establishing that the minimum educational requirement of the offered position could be met by an individual with the equivalent of a bachelor's degree based on a combination of lesser degrees.

In response to the RFE, the petitioner submitted a more detailed academic credentials evaluation from [REDACTED], dated October 20, 2009. The evaluation states that the beneficiary's two-year postgraduate diploma from Symbiosis Institute of Management Studies is equivalent to a four-year U.S. bachelor of business administration degree with a concentration in information systems and marketing. The evaluation states that "Symbiosis Institute of Management Studies is part of

⁵EDGE was created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). ACCRAO, 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 its registration page at <http://aacraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials" (accessed January 18, 2010).

⁶<http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=131> (accessed January 18, 2010).

⁷*Id.*

Symbiosis International University, an accredited university in India that is officially recognized by the University Grants Commission of India and the Department of Higher Education of the Government of India." The evaluation also states that a three-year bachelor's degree is required for admission into the postgraduate diploma program.

USCIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The submitted credentials evaluation cites to www.education.nic.in/higheredu/deemu-symbiosis.pdf in support of the claim that Symbiosis Institute of Management Studies is a "constituent institution within Symbiosis International University." However, the information at the provided link states that Symbiosis Institute of Management Studies only became part of Symbiosis International University on November 10, 2006, after the beneficiary received his postgraduate diploma. Further, the evaluation cites to www.ugc.ac.in/inside/deemeduniv.html as evidence that Symbiosis International University is an accredited university. This link is to the University Grants Commission website, which states that Symbiosis International University was accredited on May 6, 2002. Accordingly, Symbiosis International University was only accredited by the University Grants Commission after the beneficiary obtained his postgraduate diploma. The evaluation also fails to address whether Symbiosis Institute of Management Studies is approved by the All-India Council for Technical Education.

In light of the above, it is concluded that the academic credentials evaluation submitted by the petitioner in response to the RFE does not establish that the beneficiary received his postgraduate diploma from an accredited university approved by the All-India Council for Technical Education. Therefore, the petitioner has not established that the beneficiary possesses a single foreign degree that is equivalent to a U.S. bachelor's degree in computer science, engineering, or related field.

In view of the above, because the petitioner has not established that the beneficiary possesses a bachelor's degree or foreign equivalent degree, the beneficiary cannot be classified as a member of the professions. Section 203(b)(3)(A)(ii) of the Act limits classification to individuals who "hold baccalaureate degrees and are members of the professions." 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. 1289m 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 a member of the professions 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 degree, the AAO would not consider education earned at an institution other than a college or university.

Further, for classification as a member of the 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. The regulation also 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.)

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

As is explained above, the petitioner in this matter must rely on the beneficiary's combined education to reach the "equivalent" of a degree, which is not a bachelor's degree based on a single degree in the required field listed on the certified labor certification.

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor's degree.

However, as is explained below, it is concluded that the beneficiary could qualify as a skilled worker under section 203(b)(3)(A)(ii) of the Act.

The occupation of the offered position is determined by the DOL, and its classification code is notated on the labor certification. The DOL previously used the Dictionary of Occupational Titles (DOT) to classify occupations. O*NET is the current occupational classification system in use by the DOL. O*NET, located at <http://online.onetcenter.org>, is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. See <http://www.bls.gov/soc/socguide.htm>. For older labor certifications that were assigned a DOT code instead of an O*NET-SOC code, O*NET contains a crosswalk that translates DOT codes into the current O*NET-SOC codes at <http://online.onetcenter.org/crosswalk/DOT>.

In the instant case, the DOL categorized the offered position under the DOT code 189.117-030 – Project Director. Using the crosswalk, this translates to SOC code 11-9199.00 - Managers, All Other. This is a generic SOC category. According to O*NET, 55% of persons classified in this category possess a bachelor's degree or higher.⁸ Because of the requirements of the proffered position and DOL's standard occupational requirements, the proffered position can be considered under the skilled worker category.

Therefore, the remaining issue is whether or not the beneficiary qualifies for the offered position. Since the petitioner has not established that the beneficiary possesses a bachelor's degree or foreign equivalent, in order to obtain classification as a skilled worker, the petitioner must establish that the minimum educational requirement of the offered position as set forth on the labor certification could be met by an individual with the equivalent of a U.S. bachelor's degree based on a combination of lesser degrees.⁹

The AAO is cognizant of the recent 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

⁸<http://online.onetcenter.org/link/details/11-9199.00> (accessed January 21, 2010).

⁹The 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.

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).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 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. *Snapnames.com, Inc.* 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. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19.

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 Form ETA 750 does not specify an equivalency to the requirement of a bachelor's degree.

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 about the beneficiary's qualifications. *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.

Further, the employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 14 n. 7. Thus, USCIS agrees that the best evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position is evidence of how it expressed those requirements to DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence is needed to ensure inflation of those requirements is not occurring in an effort to fit the beneficiary's credentials into requirements that do not seem on their face to include what the beneficiary has.

Thus, the AAO issued a RFE soliciting such evidence. The RFE states, in part:

The regulation at 20 C.F.R. § 656.21(b)(1) in effect at the time the labor certification was filed with the DOL required an employer submitting a reduction in recruitment labor certification to document its reasonable good faith efforts to recruit U.S. workers. This information includes the sources the employer used for recruitment, the number of U.S. workers responding to the employer's recruitment, the number of interviews conducted with U.S. workers, the lawful job-related reasons for not hiring each U.S. worker interviewed, the wages and working conditions offered to the U.S. workers, and a copy of the advertisement used to recruit U.S. workers for the position. This information would be probative in determining your organization's intent at the time it filed the labor certification.

In response, the petitioner submitted documentation prepared during the labor certification process, including the recruitment report, the notice of the job opportunity posted for 10 consecutive days at the intended worksite, the print advertisements for the offered position, and the posting of the offered position on America's Job Bank, 30-day job order. The petitioner did not submit any resumes received in response to the petitioner's recruitment efforts.

The recruitment report and notice of posting states that the offered position requires a "Bachelor's degree or equivalent." The report did not mention the reasons why applicants were rejected, so it is not possible to determine whether any applicants were rejected for failure to possess a bachelor's degree. The print advertisement and America's Job Bank posting states that the position requires a "BS/equiv." The Form ETA 750 does not provide that the minimum academic requirements of a "Bachelors or equivalent" in computer science, engineering, or a related field of study might be met through a combination of education.¹⁰

¹⁰The DOL has provided the following field guidance related to this issue: 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

The evidence submitted in response to the RFE issued by this office fails to establish that the petitioner advised the DOL or any otherwise qualified U.S. workers that the educational requirements for the offered position may be met through a quantitatively lesser degree or defined equivalency. Thus, the beneficiary does not qualify as a skilled worker as he does not meet the terms of the labor certification as explicitly expressed or as extrapolated from the evidence of its intent about those requirements during the labor certification process.

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and fails to meet the requirements of the labor certification, and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act.

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.

750 or in its advertisement and recruitment efforts. See Memo. from [REDACTED] 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 [REDACTED] U.S. Dept. of Labor's Empl. & Training Administration, to [REDACTED] (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 phases of recruitment exactly what will be considered equivalent or alternative [to the degree] in order to qualify for the job." See Memo. from [REDACTED] 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 [REDACTED] U.S. Dept. of Labor's Empl. & Training Administration, to [REDACTED] (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 [USCIS] to accept the employer's definition." *Id.* To our knowledge, the field guidance memoranda referred to here have not been rescinded.