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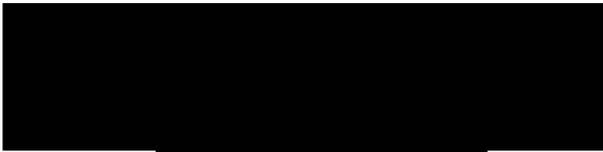
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: FEB 18 2010  
LIN 06 176 53803

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:



**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 software/computer consulting business. It seeks to employ the beneficiary permanently in the United States as a systems analyst. As required by statute, an Form ETA 750,<sup>1</sup> Application for Alien Employment Certification approved by the Department of Labor (the DOL), accompanied the petition. 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).

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on December 28, 2004.<sup>2</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on May 30, 2006.

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

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<sup>1</sup> After March 28, 2005, the correct form to apply for labor certification is the ETA Form 9089. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004).

<sup>2</sup> 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.

Responsible for database design, development and maintenance of software projects associated with client and server applications. Tests, implements, modifies and maintains software systems and graphic user interfaces for business applications using object-oriented analysis, Oracle applications, Developer 2000 and SQL\*Forms.

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	<u>X</u>
High school	<u>X</u>
College	<u>X</u>
College Degree Required	<u>“Bachelor’s or equivalent”</u>
Major Field of Study	<u>“Computer Science or MIS”</u>

Experience:

Job Offered	<u>2 years</u>
(or)	
Related Occupation	Blank

Block 15:

Other Special Requirements None are stated.

As set forth above, the proffered position requires a Bachelor’s degree in “Computer Science, or, a MIS” or equivalent and two years of experience in the job offered.

On the Form ETA 750B, signed by the beneficiary, the beneficiary listed his prior education as: (1) Guru Nanak De University, Amritsar, India; Field of Study: Arts from July 1983 to April 1986, for which attendance he received a Bachelor’s Degree; and, (2) Green Thumb’s Education Centre, New Delhi, India; Field of Study: Computer Applications; from June 1997 to July 1998, for which attendance he received a Computer Diploma.

In support of the beneficiary’s educational qualifications, the record contains a copy of the beneficiary’s diploma from Guru Nanak De University, Amritsar, India. It indicates that the beneficiary was awarded a Bachelor of Arts degree on 1986. Further the record states that the beneficiary attended the Green Thumb’s Education Centre, New Delhi, India; Field of Study: Computer Applications; from June 1997 to July 1998, for which attendance he received a Computer Diploma.

The petitioner additionally submitted a credentials evaluation, dated March 15, 2004, from Excel Educational Evaluators. The evaluation described the beneficiary’s diploma from Guru Nanak De

University as a Bachelor of Arts degree in economics, political science, history and “related subjects” and also describes a Computer Diploma the beneficiary received from the Green Thumb’s Education Centre, New Delhi, India, in 1998. The evaluator concluded that the beneficiary has the equivalent of a Bachelor of Science degree in the field of Management Information Systems from an accredited college or university in the United States based upon a combination of these two educational experiences.

Further, the petitioner also submitted a credentials evaluation from the California University Foreign Credentials Evaluation and Research-Amorsolo Foundation, Inc., of Los Angeles, California dated February 24, 2007. Similarly, the evaluator stated that the beneficiary had received a Bachelor of Arts degree from Guru Nanak De University, in 1986, and a Computer Diploma from the Green Thumb’s Education Centre, New Delhi, India, in 1998. According to the evaluator, the beneficiary’s combined studies are equivalent in level and purpose to the same degree awarded by the regionally and nationally accredited colleges and universities in the United States of America.

The director denied the petition on February 2, 2007. He determined that the beneficiary’s Bachelor of Arts degree could not be accepted as a foreign equivalent degree to a U.S. bachelor’s degree in Computer Science or MIS because the evidence submitted does not establish that the beneficiary held a four-year bachelor’s degree when the request for certification was accepted, and the beneficiary cannot be found to have met the minimum requirements stated on the labor certification.

On appeal, with regard to the beneficiary’s qualifying academic credentials, counsel submitted a legal brief and a letter from the petitioner dated February 20, 2007; copies of letters dated July 23, 2003, and January 7, 2003, from Efren Hernandez III of the INS Office of Adjudications to counsel in other cases;<sup>3</sup> partially obscured copies of the petitioner’s fictitious business name statement filing; and,

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<sup>3</sup> These letters express Mr. Hernandez’s opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). Within the July 2003 letter, Mr. Hernandez states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor’s degree.

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from U.S. Citizenship and Immigration Services (USCIS) are not binding on the AAO or other USCIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, Significance of Letters Drafted By the Office of Adjudications (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced in Mr. Hernandez’ correspondence, permits a certain combination of progressive work experience and a bachelor’s degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken

a statement dated March 15, 2004, announcing the reputed merger of Technocrat Solutions, Incorporated, and the petitioner.

Part A of the Form ETA 750 indicates that the DOL assigned the occupational code of 15-1031 and title "computer software engineers, applications," to the proffered position. The DOL's occupational codes are assigned based on normalized occupational standards. According to the DOL's public online database at <http://online.onetcenter.org/crosswalk/> (accessed January 18, 2010 under "systems analyst," the DOL's updated correlative occupation) 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 Needed" for the occupation type closest to the proffered position.

According to the DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. The 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> (accessed January 18, 2010). Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

A considerable amount 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 the DOL's standard occupational requirements, the proffered position is for a professional, but might also be considered under the skilled worker category.

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university

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together, equals the same amount of coursework required for a U.S. baccalaureate degree. We do not find the determination of the credentials evaluation probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245.

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.

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.

Initially, however, we will provide an explanation of the general process of procuring an employment-based immigrant visa and the roles and respective authority of both agencies involved.

As noted above, the Form ETA 750 in this matter is certified by the DOL. Thus, at the outset, it is useful to discuss the 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 the 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).<sup>4</sup> *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.

*K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9<sup>th</sup> Cir. 1983). The court relied on an amicus brief from the 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,

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

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 (9<sup>th</sup> Cir. 1984).

Therefore, it is the 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. 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 had 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”(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 (now USCIS), 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).

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 1289m 1295 (5<sup>th</sup> Cir. 1987). It can be presumed that Congress’ narrow requirement in 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, we would not consider education earned at an institution other than a college or university.

The petitioner in this matter relies on the beneficiary’s combined education and work experience 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. 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.

We are 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 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.

In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner’s intent regarding educational equivalence is clearly stated on the Form ETA 750 and does not include alternatives to a four-year bachelor’s degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at \*7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner’s asserted intent, USCIS “does not err in applying the requirements as written.” *Id.* See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a “bachelor’s or equivalent” requirement necessitated a single four-year degree). In this matter, the Form ETA 750 does not specify an equivalency to the requirement of a four-year bachelor 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 the 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 the 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 request for evidence (RFE) on June 5, 2009, soliciting such evidence. The petitioner failed to provide a response, and therefore, the AAO must examine the record of proceeding as it exists without the response. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

To determine whether a beneficiary is eligible for a preference immigrant visa, 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).

The petitioner submitted two evaluations of the beneficiary's education to show that the beneficiary met the educational requirements of the labor certification.

Evaluation One:

- Evaluation: Excel Educational Evaluators, by [REDACTED] dated March 15, 2004.
- The evaluation considered the beneficiary's educational accomplishments from Guru Nanak De University, Amritsar, India, in the field of Arts from July 1983 to April 1986, for which the beneficiary received a Bachelor's Degree. According to the evaluator, the beneficiary coursework there included classes in economics, political science, history and "related subjects."<sup>5</sup>

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<sup>5</sup> According to the beneficiary's marks sheet from Guru Nanak De University, Amritsar, India, the beneficiary attended classes in English, economics, political science, history and mathematics in all

- According to the evaluator, the beneficiary enrolled in the Green Thumb's Education Centre, New Delhi, India; to study Computer Applications eleven years after university graduation from June 1997 to July 1998, for which the beneficiary received a Computer Diploma. Although the evaluator did not specify the courses undertaken at the Center, he stated that these "academic classes" were "analogous in content and duration to classes in bachelor's-level programs at U.S. universities." According to the evaluator, the beneficiary was awarded a Post Graduate Diploma in Computer Programming in 1998.
- The evaluator concluded that the beneficiary has the equivalent of a Bachelor of Science degree in the field of Management Information Systems from an accredited college or university in the United States based upon a combination of these two educational experiences.

#### Evaluation Two:

- Evaluation: California University Foreign Credentials Evaluation and Research-Amorsolo Foundation, Inc. of Los Angeles, California dated February 24, 2007. According to the evaluator, he examined the mark sheets and diploma from Guru Nanak De University, Amritsar, India, and the education received at Green Thumb's Education Centre, India. The evaluator opined that the aforementioned combined education is a "grand total of 145.0 semester units."
- The evaluator stated the beneficiary has received a degree of Bachelor of Science in Management Information System on July 20, 1998, from Guru Nanak De University, and a Computer Diploma from Green Thumb's Education Centre, India. As already stated, according to the evaluator, the beneficiary's combined studies are equivalent in level and purpose to the same degree awarded by the regionally and nationally accredited colleges and universities in the United States of America.

Moreover, as advised in the RFE issued to the petitioner by the AAO, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).<sup>6</sup> According to its website, [www.aacrao.org](http://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,

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three years. There is no computer science courses noted.

<sup>6</sup> 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.

<http://aacraoedge.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” Authors for EDGE are not merely expressing their personal opinions. Rather, they must 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](http://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 states that a Bachelor of Arts degree obtained in India represents the attainment of a level of education comparable to two to three years of university study in the United States.

The Form ETA 750 does not provide that the minimum academic requirements of four-years of college might be met through a combination of educational experiences and/or work experience, or some other formula other than that explicitly stated on the Form ETA 750. Thus, the alien 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.

Beyond the decision of the director, an additional issue in this case is whether or not the petitioner demonstrated that the beneficiary satisfied the minimum level of education and experience as stated on the labor certification.

The beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the labor certification eliciting information of the beneficiary’s work experience, he claimed the following work experience: (1) employed fulltime as a Systems Analyst with [REDACTED], Hong Kong, a banking institution, from March 1992 to March 2002; (2) employed fulltime as a Senior Programmer with [REDACTED] Los Angeles, California, an investment and business service group of companies, from September 2002, to April 2004; and, (3) employed fulltime as a Systems Analyst with the petitioner located in Canoga Park, California, from May 2004, to “present,” i.e. December 21, 2004.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation—*

(A) *General.* Any requirements of training or experience for skilled workers,

professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The record of proceeding contains a short employment reference statement for the beneficiary dated March 6, 2002, from [REDACTED] with an obscured signatory. According to the statement, the beneficiary had been employed since March 1992 as a Systems Analyst with no description of his job duties given. According to the statement, the beneficiary was involved in the development of software projects that his “*knowledge and performance of duties is very good,*” that he has “*excellent communication and presentation skills,*” and that he is a “*motivating and co-operative team member.*”

The petitioner has submitted a statement from [REDACTED] dated April 30, 2004, stating that the beneficiary was a full-time employee working as a Senior Programmer from September 2002 to April 2004. There is no mention of the occupation Systems Analyst or its duties in the statement. According to this statement, the beneficiary conducted assignments on business applications involving software system development that included “analysis, code conversion, testing, debugging and implementation of system [sic].” According to the statement the beneficiary was a valued staff member and was hardworking and sincere.

There is an addition job reference dated February 21, 1992, for a position not mentioned in the labor certification, pertaining to the beneficiary’s employment as a Programmer with the Bank of Credit and Commerce, Hong Kong. According to the brief statement, the beneficiary was employed there from April 1988 to February 1992, that the beneficiary’s knowledge and performance of duties was found to be good, that the beneficiary has excellent communication and presentation skills, and that he was a motivating and co-operative team member.

Since two of the employment references from [REDACTED] and the Bank of Credit and Commerce are almost identical in format as well as content, they appear to be pre-prepared by a third party, and presumably, they are not the statements of either writer. If USCIS fails to believe that a fact stated in the petition is true, USCIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

Further, the beneficiary's job duties are not stated nor the name and address, or title of the beneficiary's trainer or employer, or a description of the training received, or the experience of the beneficiary as a systems analyst detailed in any of the three letter statements. Therefore, all of the statements are insufficient evidence under the regulation at 8 C.F.R. § 204.5(1)(3) to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.

The preponderance of the evidence does not demonstrate that the beneficiary acquired two years of experience from the evidence submitted into this record of proceeding. Thus, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

Further, beyond the decision of the director, an issue in this case is whether or not the petitioner has the ability to pay the proffered wages to each of the beneficiaries that it sponsored from the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d at 1002 n. 9 (noting that the AAO reviews appeals on a de novo basis).

In the present case, the petitioner has submitted its 2005 Form 1120S federal tax return stating net income of \$250,000.00 (Form 1120S, Schedule K, Line 17e). However, as noted, the priority date is 2004. The petitioner has submitted a Form 1120 federal tax return for 2004 but for another entity, Technocrat Solutions, Inc.

According to counsel, the petitioner is the surviving company of a merger between itself and Technocrat Solutions, Incorporated. As proof of this event, the petitioner has submitted on appeal partially obscured copies of the petitioner's fictitious business name statement filing, and a statement dated March 15, 2004, announcing the reputed merger of Technocrat Solutions, Incorporated, and the petitioner. These documents are insufficient evidence of the merger of these two separate corporations (*See Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm. 1986).

Further, there is no explanation in the record why the tax return of Technocrat Solutions, Incorporated, is relevant evidence of the petitioner's ability to pay the proffered wage in 2004. According to the petition, the petitioner was established in 2001. The petitioner's failure to submit its 2004 tax document cannot be excused. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Also, the AAO specifically requested evidence pertaining to the petitioner's ability to pay the proffered wage in 2006, 2007, 2008, and 2009. As noted above, the petitioner failed to respond to the RFE. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant

petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending or approved simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). See also 8 C.F.R. § 204.5(g)(2). According to the electronic records of USCIS the petitioner has filed numerous non-immigrant and immigrant petitions since 2004. The petitioner must demonstrate the petitioner's ability to pay the total amount required to pay the wages offered to all the beneficiaries sponsored by the petitioner. The record in the instant case contains no information concerning the petitioner's ability to pay the proffered wage in 2004, nor information about wages offered or paid to the other potential beneficiaries of petitions filed by the petitioner, even though the AAO specifically required this evidence in its RFE.

The AAO has also accessed the electronic records of USCIS concerning immigrant and non-immigrant petitions filed by [REDACTED] and similarly, it has filed numerous petitions. Assuming for the sake of argument that the petitioner represents the merged entities as the surviving corporation, then it also has the burden of proving that it has ability to pay all sponsored beneficiaries of petitions filed by [REDACTED]

The record of proceeding for the instant petition fails to establish the ability of the petitioner to pay the proffered wage to the beneficiary as well as all the beneficiaries of the pending petitions.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.