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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
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U.S. Citizenship  
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FILE: EAC 06 076 51310 Office: VERMONT SERVICE CENTER Date: FEB 25 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:

SELF-REPRESENTED

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, Vermont 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 IT consulting company. It seeks to employ the beneficiary permanently in the United States as a systems analyst. As required by statute, a Form ETA 750,<sup>1</sup> Application for Alien Employment Certification approved by the Department of Labor (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 record shows that the appeal is properly filed and 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.

As set forth in the director's April 20, 2007 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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).<sup>2</sup>

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.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel submits an additional academic equivalency evaluation from [REDACTED]. The Trustforte Corporation, dated May 7, 2007. [REDACTED] states that the beneficiary completed a bachelor of science program and also completed a postgraduate program in computer studies at Apple Industries

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<sup>1</sup> After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

<sup>2</sup> 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).

Limited in India under the auspices of the National Center for Information Technology (NCIT). [REDACTED] states that the beneficiary attained the equivalent of a bachelor of science degree with a dual major in computer science and biology from an accredited U.S. college or university. [REDACTED] Silberzweig further notes that the beneficiary's studies at the University of Burdwan were the equivalent of two years of academic studies in biology from an accredited college in the United States. [REDACTED] describes the beneficiary's studies under the auspices of NCIT as advanced bachelor's level academic studies, and states that the completion of these studies satisfies the academic requirements for a bachelor's level major concentration in computer science.

The petitioner also submits an evaluation from [REDACTED] CIS Department, Medgar Evers College of the City University of New York, School of Business. [REDACTED] states that the beneficiary, based on his studies at the University of Burdwan and his post secondary International Diploma in Computer Studies from NCIT, attained the foreign equivalent of a bachelor of science degree with a dual major in computer science and biology from an accredited U.S. college or university.

On appeal, [REDACTED] identified as the petitioner's corporate legal advisor, reiterates the comments in [REDACTED] and [REDACTED] evaluations. He asserts that the petitioner employs individuals in this position with the minimum of a bachelor's or equivalent in degree in math, management information systems, computer science, engineering, or a related field. Mr. [REDACTED] states that the petitioner has never hired anyone without the minimum of a bachelor's degree in the above-mentioned fields or equivalent. He also states that the beneficiary has been providing his technical expertise for the past 17 years and it would be difficult to replace him on a project.

The AAO issued a request for evidence on November 19, 2009 seeking evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position.<sup>3</sup> The AAO noted that the petitioner did not specify on the Form ETA 750 that the minimum academic requirements of a bachelor's degree or equivalent might be met through a combination of lesser degrees, credentials, and/or a quantifiable amount of work experience. The AAO further noted that the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually all less than a U.S. bachelor's degree or its foreign equivalent and/or quantifiable amount of work experience, or that the petitioner specified that any such combination would be acceptable during the labor market test

Further, the AAO examined the three academic equivalency reports submitted to the record and found them to be inconsistent with each other. The AAO then explained that it consulted the DOL *O'Net*

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<sup>3</sup> 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).

Database that identified the proffered position as a professional and that it also consulted the EDGE<sup>4</sup> database that did not equate the beneficiary's credentials to a U.S. baccalaureate degree. The AAO noted that the evidence in the record of proceeding as currently constituted did not support a determination that the petitioner intended the actual minimum requirements of the proffered position to include alternatives to a bachelor degree such as the credentials held by the beneficiary.<sup>5</sup> The AAO requested that the petitioner submit a complete copy of its Form ETA 750 as certified by DOL including any documentation that summarized the petitioner's recruitment efforts and its explicitly expressed intent concerning the actual minimum requirements of the proffered position, including the recruitment report, a copy of the position posting notice and recruitment ads placed.

In response, the petitioner did not submit its recruitment report or accompanying documentation; however, it did submit other documentation.

In the petitioner's response, counsel states that the petitioner views the beneficiary to have fulfilled the four-year degree requirement by completing a two-year degree program from the University of Burdwan and by completing a two-year International Diploma in Computer Studies from APTECH that was accredited by AICTE.<sup>6</sup> Counsel notes that the record indicates that Apple Industries Limited or NCC was approved by AICTE and that during the beneficiary's attendance, it was empowered to confer advanced level university accredited hours.

While the AAO acknowledges that the APTECH program does appear to be accredited by AICTE, this fact is not the main factor in the director's decision to deny the instant petition. The director specifically stated that the petitioner did not indicate on its Form ETA 750 that a combination of

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<sup>4</sup> Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).<sup>4</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, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

<sup>5</sup> The beneficiary obtained a two-year bachelor's degree in Chemistry, Biology and Zoology from the University of Burdwan, India, and attended an two-year fulltime course conducted by Apple Industries Limited, New Delhi, India, from which he obtained an NCC International Diploma in Computer Studies.

<sup>6</sup> The petitioner submits a letter from [REDACTED], Aptech Limited dated December 29, 2008. [REDACTED] states that the Apple Industries Limited program for an International Diploma in Computer studies, NCC, UK is accredited by AICTE, as both graduate and post graduate.

lesser degrees or education plus work experience would be acceptable to meet the educational requirement of a bachelor's degree.

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 April 22, 2002.<sup>7</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on January 17, 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: "Analyze, design, develop, debug, modify and implement various client server technologies using Unix, NT, Windows, Oracle, SQL Server BV, ASP, MTS, MSMQ, XML, C, C++."

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	X
High school	X
College	X
College Degree Required	Bachelor's
Major Field of Study	Engineering & Science

Experience:

Job Offered	2
(or)	
Related Occupation	2
Computer Software Development and/or Consultancy	

Block 15:

Other Special Requirements (Blank)

As set forth above, the petitioner marked the Form ETA 750 "X" with regard to number of years of college. The AAO views the "X" to signify four years of college. Further, the years of college

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<sup>7</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.

culminate in a Bachelor's degree in engineering and science. The petitioner further required two years of experience in the job offered or in computer software development and/or consultancy.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma from The University of Burdwan, India. It indicates that the beneficiary was awarded a Bachelor of Science in a two-year degree program in 1987. The beneficiary's single marks sheet for his examination in 1987 indicates his coursework was in chemistry, biology, and zoology. The petitioner additionally submitted a copy of a document entitled "International Diploma in Computer Studies" from the NCC National Centre for Information Technology, United Kingdom. This document indicated that the beneficiary attended a course moderated by NCC and given by [REDACTED], New Delhi, India and passed the NCC examinations with credit.

An additional page listed the beneficiary's seven courses with examination marks. These courses are identified as: basic computer principles, computer programming, computer-related mathematics and statistics, human communication, business organization, computerized accountancy, and programming project. The petitioner also submitted copies of a Microsoft Certificate of Excellence that stated the beneficiary completed requirement to be recognized as a Microsoft Certified Professional, as well as copies of four Microsoft Examination Score Reports for Microsoft training programs. This document is dated June 29, 1990.

As stated previously, the petitioner also submitted an undated credentials evaluation from [REDACTED] Baruch College. The evaluation concludes that the beneficiary attained the equivalent of a bachelor of science degree in computer information systems, based on his post-secondary academic studies and his professional experience, including sixteen years of bachelor's level employment in the computing field.

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). Additionally, 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. As noted by the director, [REDACTED] evaluation report combined the beneficiary's two years of university-level studies combined with his approximately sixteen years of professional training and work experience in computer information systems to conclude that the beneficiary had achieved the equivalent of a U.S. four-year bachelor's degree in computer information systems, but that regulatory-prescribed equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

In the evaluation reports submitted on appeal, [REDACTED] and [REDACTED] both combine the beneficiary's university-level studies at the University of Burdwan with his studies through the National Centre for Information Technology and then state that the beneficiary attained the equivalent of a bachelor of science degree with a dual major in computer science and biology.

Thus, [REDACTED] and [REDACTED] evaluations are in conflict with [REDACTED] evaluation. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states:

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.

Further [REDACTED] states that the beneficiary earned entry-level courses in social sciences, mathematics, and the sciences while at the University of Burdwan, although the one page marks statement submitted to the record for the beneficiary's studies at the University of Burdwan only indicates coursework in biology, chemistry and zoology. [REDACTED] also describes the beneficiary's studies through the National Centre for Information Technology as an advanced post-secondary program; however, the initial course listed in the beneficiary's Record of Achievement, namely, basic computer principles, suggests the coursework was entry-level post-secondary studies, rather than advanced.<sup>8</sup> Thus the AAO gives no weight to [REDACTED] evaluation or to the two evaluations submitted on appeal.

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 record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

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<sup>8</sup> The AAO acknowledges that the AICTE accreditation information submitted in response to the AAO RFE describes the APTECH program as graduate/postgraduate. However, the beneficiary's studies would appear to be postgraduate studies in a new field, rather than any extension of his two year coursework in zoology, chemistry and botany.

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

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

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

It is left to U.S. Citizenship and Immigration Services (USCIS) to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).<sup>9</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).<sup>10</sup>

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<sup>9</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

<sup>10</sup> The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.*

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).

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 two-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. 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.

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

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§ 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).

*Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the ETA 750 and does not include alternatives to a 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 Bachelor's degree in the engineering and science fields.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer exactly as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying the plain language of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.) Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5<sup>th</sup> 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.

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 two-year bachelor’s degree will not be considered to be the “foreign equivalent degree” to a United States baccalaureate degree. 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.

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 (5<sup>th</sup> 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.

In the instant matter, the record contains a one-page transcript that appears to list all the courses undertaken by the beneficiary in his two-year degree program. None of the courses listed are in the field of engineering, and the science courses appear to be in the natural sciences. Thus, the beneficiary’s studies in the field of engineering or science were obtained exclusively through his postsecondary studies with NCIT or his Microsoft certification training.

The Form ETA 750 does not provide that the minimum academic requirements of an undefined number of years of college and a bachelor of science degree in engineering or science might be met through two years of college in an unrelated subject and additional vocational studies and

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postsecondary or postgraduate studies in computer studies. The Form ETA 750 does not provide any formula other than that explicitly stated on the Form ETA 750. On appeal, the petitioner states that it accepts applicants with a minimum of a bachelor's degree or equivalent degree in math, management information systems, computer science engineering, or a related field and that it has never hired anyone without the minimum of a bachelor's degree in these fields or equivalent. The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and, thus, does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act.

Even if the petition qualified for skilled worker consideration, the beneficiary does not meet the terms of the labor certification, and the petition would be denied on that basis as well. See 8 C.F.R. § 204.5(l)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification).

Beyond the decision of the director, the petitioner has not established its ability to pay the proffered wage as of the priority date. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the ETA Form 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. See 8 C.F.R. § 204.5(d). Here, the Form ETA 750 was accepted on April 22, 2002. The proffered wage as stated on the Form ETA 750 is \$72,000 per year. The Form ETA 750 states that the position requires two years of work experience in the proffered position or two years in the related occupation of computer software development and/or consultancy.

The AAO notes that the petitioner provided a copy of its audited consolidated financial statement as of March 30, 2004 and March 30, 2005. As stated previously, the priority date for the instant petition is April 22, 2002. The petitioner has to establish its ability to pay the proffered wage as of the 2002 priority date, not as of tax years 2004 and 2005. The petitioner also provided the beneficiary's W-2 Forms for tax years 2003 and 2004. These documents indicate the petitioner paid

the beneficiary \$71,902.31 in 2003 and \$72,666.42 in 2004. The petitioner also submitted the beneficiary's Earnings Statement dated November 29, 2005 that indicates the beneficiary earned \$68,750 as of this date. Thus while these documents indicate that the petitioner paid either in excess of the proffered wage of \$72,000 or close to the proffered wage in tax years 2003 to 2005, the record reflects no evidence of either wages paid to the beneficiary in 2002, or that the petitioner had sufficient net income or net current assets in 2002 to pay the proffered wage.

Further, the beneficiary's employment listed at job. b, Part B, Form ETA 750, differs from the letter of work verification submitted to the record. At job b, the beneficiary's employer is identified as [REDACTED]. The beneficiary claims to have worked for this company as member of the technical staff in software development from June 1999 to October 2001. The letter of work verification submitted to the record closest to the above described period of time is written by [REDACTED]

[REDACTED] This letter states the beneficiary worked as a "software consultant at Wells Fargo bank thru us from May '99 to March 2001." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "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." The other two letters of work verification, for the beneficiary's claimed employment with NIIT, and Aptech in India, are very limited in their description of the beneficiary's previous duties and how these duties correspond to the described job duties of the proffered position as stipulated on the Form ETA 750.

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.

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.