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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:

Office: NEBRASKA SERVICE CENTER

Date: JUL 01 2010

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

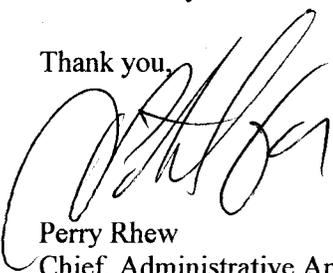
ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching your decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. 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. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,


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 The director's decision will be withdrawn. The case will be remanded to the director for further review and investigation.

The petitioner is a Christian non-profit school. It seeks to employ the beneficiary permanently in the United States as a high school teacher, math and physics. An ETA Form 9089, Application for Permanent Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification.

On appeal, the petitioner contends that the beneficiary's educational credentials satisfied the terms of the labor certification and that the petition should be approved.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).¹

For the reasons discussed below, the AAO finds that the beneficiary's credentials satisfied the minimum level of education stated on the labor certification. Further, the AAO would also note that various decisions by federal circuit courts, which are binding on this office, have upheld our authority to evaluate whether the beneficiary is qualified for the job offered. The AAO is remanding the case in order for the director to determine whether the petitioner has the continuing ability to pay the proffered wage pursuant to 8 C.F.R. § 204.5(g)(2).²

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

¹ The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

² The proffered wage as set forth on Part G of the ETA Form 9089 is \$41,000 per year. The regulation at 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 in the form of copies of annual reports, federal tax returns, or audited financial statements.

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.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date, the day the ETA Form 9089 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on November 17, 2005. The visa preference petition was filed on June 27, 2006.

The job qualifications requirements are found on Part H of the ETA Form 9089. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. Part H sets forth the minimum requirements for the position of High School Teacher (Math and Physics). The proffered position requires a Bachelor's degree in Science (Math or Physics) and six months of experience in the job offered. Part H Item 7 and 7-A indicates that the employer will accept an alternate field of study of "education." Part H, Item 9 indicates that the employer will accept a foreign educational equivalent. Part H, Item 11 describes the job duties as including teaching math and physics to secondary grade students, preparing course materials, class lectures, assignment of homework, etc.

In determining whether a beneficiary is eligible for a preference immigrant visa, United States Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements, but must recognize that the DOL sets the contents of the labor certification. *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, 1016; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

DOL assigned the occupational code of 25-2031.00-Secondary School Teachers, Except Special and Vocational Education to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database³ and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See*

³See <http://online.onetcenter.org/link/details/25-2031.00> (accessed 5/25/10).

<http://online.onetcenter.org/link/details/25-2031.00>, (accessed 05/24/10). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

It is additionally noted that, according to section 101(a)(32) of the Act, 8 U.S.C. § 1101(32), a “‘profession’ shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.”

Further, based on a Bureau of Labor Statistics survey of employees aged 25-44, DOL states that 96% of the respondents in this category hold a Bachelor’s degree or higher level of education. On this basis, as well as the title of the certified job, its responsibilities as set forth in Part A of the approved labor certification, and its minimum educational requirements of a Bachelor of Science, the job must be considered as a professional position.

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 regulations use 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.

As noted above, the ETA Form 9089 in this matter is certified by DOL. 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.

According to 20 C.F.R. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

Under § 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers 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 or not the alien is qualified 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). *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 (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 this matter, the issues are how the minimum educational requirements as set forth on the ETA Form 9089 should be interpreted and whether the beneficiary possesses the necessary academic credentials.

In support of the beneficiary's Indian educational credentials, the petitioner submitted copies of the beneficiary's 1965 three-year Bachelor of Science degree in physics and mathematics from the University of Madras, India and his 1969 Bachelor of Teaching degree from the University of Madras. The marks sheet for his Bachelor of Teaching indicates that his teaching practice was in English and Math.

The petitioner also provided copies of several credential evaluations. A credential evaluation report from [REDACTED] dated April 16, 2007 was submitted. With no discussion, he indicates that the beneficiary's 1969 Bachelor of Teaching and the beneficiary's 1965 B.S. in Physics and Mathematics are the U.S. equivalent of a Bachelor of Science in Physics and Mathematics and a second major in Education.

The record contains three additional evaluations of the beneficiary's 1965 three-year bachelor of science degree. The first evaluation, dated April 8, 2007, was prepared by [REDACTED] prepared an evaluation dated July 14, 2007,⁵ and [REDACTED] for European-American University, Ltd. prepared an evaluation dated July 16, 2007.⁶ All three evaluations reach the identical

[REDACTED] indicates that she is currently a [REDACTED] and has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure [REDACTED] but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr/index1.html, [REDACTED] degrees based on past experience.

[REDACTED] indicates he has a "canonical diploma of Sacrae Theologiae Professor" from St. David's Oecumenical Institute of Divinity, which he equates to a Doctorate of Divinity. We were unable to find any reference to this institution on the Internet. All three individuals appear to be connected to each other in some way. Professor Linley's European-American University was founded by [REDACTED] who initially formed it as the University for Self-Empowerment, which became Marquess College, which became St. Simon's College before being adopted as the European-American University. See www.thedegree.org/interview.html (accessed November 5, 2009). [REDACTED] acknowledges that degrees from the European-American University will not be accepted in the United States and asserts that they may appeal to "those whose pursuit of a degree is purely for interest or to validate what they have achieved for personal satisfaction." *Id.* See also www.thedegree.org/apel.html, the European-American University awards credit based on prior work experience (accessed November 5, 2009).

⁶According to its website, www.thedegree.org/apel.html (accessed September 18, 2009), European-

conclusion that the beneficiary's three-year Bachelor of Science degree in physics and mathematics is the U.S. equivalent, standing alone of a "Bachelor of Science, representing 120 semester credit hours, with a major in Physics from a Regionally Accredited Institution of Higher Education in the United States of America."

It is noted that while [REDACTED] indicates that she is a member of the American Evaluation Association (AEA), the Association of International Educators (NAFSA) and the European Association for International Education (EAIE), the record does not indicate what these organizations require for membership.⁷

The [REDACTED] evaluations all conclude that the beneficiary's three-year bachelor of science degree from Madras University is equivalent to a 120 credit hour bachelor of science degree in physics from a U.S. institution of higher education. The fundamental argument of the evaluations is that a three-year bachelor's degree from India is equivalent to a 120 credit hour U.S. bachelor's degree, because an Indian three-year degree requires the same number of classroom hours (or "contact hours") as U.S. bachelor's degree. The evaluations claim that a student must attend at least 15 50-minute classroom hours to earn one semester credit hour under the U.S. system. Since U.S. bachelor's degree programs require 120 credit hours for graduation, the evaluations conclude that a program of study with 1800 classroom hours is equivalent to a U.S. bachelor's degree. Since a three-year bachelor's degree from India allegedly requires over 1800 classroom hours, the evaluations conclude that it is equivalent to a U.S. bachelor's degree.

The evaluations base this equivalency formula on the claim that the U.S. semester credit hour is a variant of the "Carnegie Unit." The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject.⁸ For example, 120 hours of classroom time was determined to

American University, Ltd. awards degrees based on experience.

⁷ The bylaws for the AEA, accessed on October 24, 2008 at www.eval.org/aboutus/bylaws.asp, indicate: "Any individual interested in the purposes of the Association shall be eligible for membership." The bylaws for NAFSA, downloaded from www.nafsa.org on October 24, 2008, do not provide any specific requirements for members in Article II other than the payment of dues. Voting members must be individuals working in educational institutions, training or research facilities, organizations involved with international education or those employed independently. Finally, EAIE indicates that it offers individual membership to professionals working in or associated with the stimulation and facilitation of internationalization in higher education in Europe and beyond. See www.eaie.org/membership/policy.asp (accessed October 24, 2008). A review of the U.S. institutions in which EAIE currently has one or more members, which includes other credential evaluation companies such as World Education Services, does not list CCI. See www.eaie.org/membership/teaser.asp?country=USA (accessed October 24, 2008).

⁸The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose charge is "to do and perform all things necessary to encourage, uphold, and dignify the profession of the teacher."

be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school.⁹ This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class.¹⁰ According to the foundation's website, the "Carnegie Unit" relates to the number of classroom hours a high school student should have with a teacher, and "does not apply to higher education."¹¹

There is no support in the record for the argument that a three-year bachelor's degree from India is equivalent to a U.S. bachelor's degree because both an Indian and U.S. degree would allegedly require an equivalent amount of classroom time. For example, if the ratio of hours spent studying outside the classroom is different in the Indian and U.S. systems, comparing hours spent in the classroom would be misleading.¹² The evaluations also rely on other opinion letters, such as one from [REDACTED] dated August 2, 2007. There is no addressee shown on the letter. [REDACTED] identifies himself as a former professor at the University of Bombay. He states that a three-year degree from India is equivalent to a U.S. bachelor's degree based on the author's opinion that Indian degrees require over 1800 contact hours. There is no evidence in the record demonstrating that this individual is qualified to determine whether a foreign academic credential is equivalent to a U.S. baccalaureate and his letter does not carry the weight of peer-reviewed published materials on evaluating Indian degrees.

The [REDACTED] evaluations also argue that the U.S. and India are members of United Nations Educational, Scientific and Cultural Organization (UNESCO) treaties, and that UNESCO "clearly recommends that the 3 and 4 year degree should be treated as equivalent to a bachelor's degree by all UNESCO members." (See p.4 of Danzig evaluation). In support of this claim, the evaluations reference the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. (See p.22 of Kersey evaluation). UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention on the recognition of qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same

<http://www.carnegiefoundation.org/about/index.asp>.

⁹<http://www.carnegiefoundation.org/about/sub.asp?key=17&subkey=1874>.

¹⁰*Id.*

¹¹*Id.*

¹²See e.g., Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise," at http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf (accessed September 18, 2009)(stating that the Indian system is exam-based instead of credit-based, thus transfer credits from India are derived from the number of exams passed; and that, in India, six exams equates to 30 credit hours).

agreement. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993.¹³ The United States was not a member of UNESCO between 1984 and 2002,¹⁴ and the Recommendation on the Recognition of Studies and Qualifications in Higher Education is not a binding legal agreement to recognize academic qualifications between UNESCO members.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree. More significantly, the recommendation does not define "comparable qualification." ██████████ assert that the beneficiary's three-year bachelor of science degree is, by itself, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.¹⁵ In summary, reliance on UNESCO for

¹³See http://www.portal.unesco.org/en/ev.php- _ID=13142&URL_DO=DO_TOPIC&URL_SECTION=201.html. (accessed 06/11/10).

¹⁴ See <http://www.nationsencyclopedia.com/United-Nations-Related-Agencies/The-United-Nations-Educational-Scientific-and-Cultural-Organization-UNESCO-MEMBERSHIP.http>. (accessed 06/11/10).

¹⁵See UNESCO's publication, "The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific" 82 (2d ed. 2004), provides:

Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. The [University Grants Commission], [All India Council for Technical Education] and [Association of Indian Universities] are developing criteria and mechanisms regarding the same.

the proposition that a three-year Indian bachelor's degree is equivalent to a four-year U.S. bachelor's degree is misplaced.

These evaluations also state that some U.S. institutions offer three-year bachelor's degree programs. It is noted that there exists accelerated degree programs in the United States. However, this fact provides no useful information about the degree obtained by the beneficiary in India. At issue is the actual equivalence of the specific education that the beneficiary obtained, not whether it is possible to obtain a baccalaureate in less than four years in an accelerated program in the United States.

Counsel also submits a copy of an October 2006, Council of Graduate Schools survey concerning the acceptance of three-year degrees. The survey shows that a small number of U.S. graduate programs accept three-year degrees from India. The survey does not reflect how many of the limited number of institutions that accept three-year degrees from outside of Europe do so provisionally and may require completion of additional coursework prior to full graduate admission. If the three-year Indian baccalaureate were truly a foreign equivalent degree to a U.S. baccalaureate, the vast majority of U.S. institutions would accept these degrees for graduate admission without provision. The cited survey underlines that there is not wide acceptance within the academic community of three-year degrees for admission into graduate schools. The evaluations provide no study or report that conclusively states that all Indian three-year degrees are equivalent to a U.S. bachelor's degree, or even that Indian three-year degrees are generally accepted for admission into U.S. graduate degree programs.

Counsel further submits copies of two letters dated June 30, 2003 and July 23, 2003, respectively, from [REDACTED] of the INS Office of Adjudications to counsel in other cases, expressing his 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). [REDACTED] 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 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 by counsel and in [REDACTED] 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 together, equals the same amount of coursework required for a U.S. baccalaureate degree.

We do not find the determination of the [REDACTED] credentials evaluations probative in this matter and find that the [REDACTED] is of limited value. 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, USCIS is not required to accept or may give less weight to that evidence. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of credentials evaluations supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those evaluations as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). 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.

Given the above inconsistencies, we have also reviewed the credentials information in the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://accraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

Authors for EDGE 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_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.

It is noted that EDGE regards an Indian Bachelor of Education, following a three-year bachelor's degree, as representing the attainment of a level of education comparable to a bachelor's degree in the United States.

In this matter, with regard to the beneficiary's three-year 1965 Bachelor of Science in physics and mathematics from the University of Madras, EDGE indicates that a bachelor of science degree in India is "awarded upon completion of two to three years of tertiary study beyond Higher Secondary Certificate (or equivalent)." In the "credential advice" reference, it is noted that the bachelor of

science degree represents a comparable level of education of two to three years of university study in the United States and that credit may be awarded on a course by course basis. The record contains the beneficiary's mark statements to verify that his degree was based on a three-year program of study.

That said, the beneficiary also possesses a 1969 Bachelor of Teaching from the University of Madras. The AAO has also consulted AACRAO's (PIER) publications, *A P.I.E.R. Workshop Report on South Asia: The Admission and Placement of Students from Bangladesh, India, Pakistan and Sri Lanka* (1986) and the *Foreign Educational Credentials Required*, (Fifth Ed. 2003). According to these publications, a Bachelor of Teaching is based upon the prior completion of a bachelor's degree and may be considered for graduate admission in the U.S. with no advanced standing. The Bachelor of Teaching is an older degree issued in India and is similar in concept to a Bachelor of Education.

In this case, following a review of the copies of newspaper and online advertisements directed toward U.S. workers, as well as the prevailing wage request submitted to DOL that the petitioner submitted, it is noted that although two of the advertisements state that a high school teacher is sought with a "BS in Math Phys. Educ + 6 months exp.," the other nine ads indicate that the petitioner would accept a "Bachelors degree, or its equivalent, in Science, Math, Physics, Education, or *related field*, plus 6 months of work experience." (Emphasis added.) The beneficiary's Bachelor of Teaching would represent a related field to Education, and was assessed as the U.S. equivalent of a Bachelor in Education and a single baccalaureate degree. Based upon a predicate three-year bachelor of science in physics and mathematics, this credential may be deemed to satisfy the requirements of the ETA Form 9089 and the regulation under section 8 C.F.R. § 204.5(l)(3)(ii)(C).

The beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," and, thus, qualifies for preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional.

Although the director's decision relevant to the beneficiary's educational credentials is withdrawn, the case will be remanded to the director to render a decision as to the petitioner's continuing financial ability to pay the proffered wage as of the priority date. It is noted that the record contains insufficient evidence in this regard and the director may request any additional evidence from the petitioner pursuant to the requirements of 8 C.F.R. § 204.5(g)(2). As noted above, the priority date in this matter is November 17, 2005. The preference petition was filed on June 27, 2006. The petitioner has submitted a copy of a 2003 federal Form 990, Return of Organization Exempt from Income Tax covering the fiscal year beginning September 2003, copies of unaudited financial statements for 2005, a copy of a 2005 cumulative wage statement, and a copy of a checking accounting statement for February 2006. The director may solicit additional evidence from the petitioner. Similarly, the petitioner may provide additional documentation within a reasonable period of time to be determined by the director. Upon receipt of all the evidence, the director will review the entire record and enter a new decision.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action consistent with the foregoing and entry of a new decision.