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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:

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Office: NEBRASKA SERVICE CENTER

Date: MAR 08 2010

IN RE:

Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The decision of the director will be withdrawn and the case will be remanded for further consideration and action.

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

The director denied the petition on October 6, 2007. The decision states that the beneficiary does not possess a single degree that is the foreign equivalent to a U.S. baccalaureate degree as required by the labor certification and the regulation for the requested immigrant visa preference classification. The AAO will also consider the sufficiency of the academic credentials evaluation in the record of proceeding, and whether the petitioner has established that the beneficiary possesses the special requirements for the offered position as set forth on the labor certification.<sup>2</sup>

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

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b); *see also Janka v. U.S. Dept. of Transp.*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>3</sup>

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<sup>1</sup>Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

<sup>2</sup>An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director 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).

<sup>3</sup>The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1).

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.

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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).

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

*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 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 9<sup>th</sup> 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).

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

Accordingly, in order to obtain classification in the requested employment-based preference category, the petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. at 159; *see also Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). In the instant case, the priority date is March 23, 2004, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). In evaluating the requirements for the offered position, USCIS must look to the job offer portion of the labor certification. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also Mandany v. Smith*, 696 F.2d 1008; *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1<sup>st</sup> Cir. 1981).

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

- Education: "Bachelor's degree or equivalent" in computer science.
- Experience: Four years of experience in the job offered or in the related occupation of systems administrator, computer programmer or engineer.
- Other Special Requirements: Working knowledge of Novell operating system and MSCE certification.

The record of proceeding contains the beneficiary's technical secondary school diploma; transcript for one year of study towards a bachelor's degree in mechanical engineering from the University of Belgrade; and an employment experience letter of [REDACTED] dated November 25, 1999, which states that the beneficiary was employed with the company from September 1, 1989 to April 1, 1999.

The record contains an evaluation of the beneficiary's academic credentials by [REDACTED], dated January 19, 2000. The letter states that the beneficiary's university studies in mechanical engineering combined with his work experience in the field of computer science is equivalent to a U.S. bachelor's degree in computer science from a regionally accredited U.S. college or university.

Because the petitioner has not established that the beneficiary possesses a bachelor's degree or foreign equivalent degree, the beneficiary cannot be classified as a member of the professions. Section 203(b)(3)(A)(ii) of the Act limits classification to individuals who "hold baccalaureate degrees and are members of the professions." A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289m 1295 (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 a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate degree, the AAO would not consider education earned at an institution other than a college or university.

Further, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien have a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. The regulation also requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.)

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

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

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section

203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor's degree.

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

The occupation of the offered position is determined by the DOL, and its classification code is notated on the labor certification. O\*NET is the occupational classification system in use by the DOL. O\*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations."<sup>5</sup> O\*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. See <http://www.bls.gov/soc/socguide.htm>.

In the instant case, the DOL categorized the offered position under SOC code 15-1071.00 – Network and Computer Systems Administrators. O\*NET states that the occupation of Network and Computer Systems Administrators falls within Job Zone Four,<sup>6</sup> and that 50% of individuals in this occupational classification hold a baccalaureate degree or higher.<sup>7</sup>

The corresponding entry in the Occupational Outlook Handbook (OOH) for SOC code 15-1071 is Computer Network, Systems, and Database Administrators.<sup>8</sup> The required education for this occupation is summarized in the OOH as follows:<sup>9</sup>

Network and computer systems administrators often are required to have a bachelor's degree, although an associate degree or professional certification, along with related work experience, may be adequate for some positions. . . . Common majors for network and systems administrators are computer science, information science, and management information systems (MIS), but a degree in any field, supplemented with computer courses and experience, may be adequate.

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<sup>5</sup>See <http://online.onetcenter.org>.

<sup>6</sup>According to O\*NET, most of the occupations in Job Zone Four require a four-year bachelor's degree. <http://online.onetcenter.org/help/online/zones> (accessed February 10, 2010).

<sup>7</sup>Details Report for 15-1071.00 at <http://online.onetcenter.org/link/details/15-1071.00> (accessed February 10, 2010).

<sup>8</sup>The OOH, located at <http://www.bls.gov/OCO>, is a nationally recognized source of career information published by the DOL's Bureau of Labor Statistics.

<sup>9</sup><http://www.bls.gov/oco/ocos305.htm> (accessed February 10, 2010).

Because of the requirements of the offered position as set forth in the labor certification, and the DOL's standard occupational requirements as set forth in O\*NET and the OOH, the proffered position does not require an individual with a bachelor's degree, and it therefore can be considered under the skilled worker category.

Therefore, the next analysis is whether or not the beneficiary qualifies for the offered position as set forth on the labor certification. Since the petitioner has not established that the beneficiary possesses a bachelor's degree or foreign equivalent degree, in order to obtain classification as a skilled worker, the petitioner must establish that the minimum educational requirement of the offered position as set forth on the labor certification could be met by an individual with the equivalent of a U.S. bachelor's degree based on a combination of lesser degrees and/or work experience.<sup>10</sup>

The AAO is cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that USCIS "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge's decision will be given due consideration when it 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

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<sup>10</sup>The regulation at 8 C.F.R. 204(5)(1)(3)(ii)(B) states the following:

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

educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at \*14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at \*17, 19.

The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at \*7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.*; see also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this matter, the Form ETA 750 does not specify an equivalency to the requirement of a bachelor's degree.

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that 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.

On appeal, counsel submitted documentation prepared during the labor certification process, including the recruitment report, the notice of the job opportunity posted for 10 consecutive days at the intended worksite, and the print advertisements for the offered position.

A review of these documents establish that, despite the ambiguity of the educational requirements set forth at Part A, Item 14 of Form ETA 750, the petitioner clearly communicated to the DOL its

intent that the offered position requires an individual with a bachelor's degree or equivalent work experience.

Therefore, the evidence submitted on appeal is sufficient to establish that the petitioner intended that the educational requirements for the offered position may be met through a quantitatively lesser degree or defined equivalency. In light of the above, the director's decision on this issue is withdrawn.

However, the petition cannot be approved because the petitioner has not established that the beneficiary meets the requirements of the offered position. First, there is no evidence in the record establishing that the beneficiary possesses MCSE certification, which is one of the special requirements set forth at Part A, Item 15 of Form ETA 750. Accordingly, the petitioner has not established that the beneficiary meets the requirements of the job offered as set forth in the labor certification.

Second, the petitioner has not established that the beneficiary possesses the equivalent of a **bachelor's degree**. **First, the academic credentials evaluation of [REDACTED] states that the beneficiary's equivalency to a bachelor's degree in computer science is based upon "three years of undergraduate education, specializing in Mechanical Engineering" at the University of Belgrade and "nine years and seven months of progressively advanced work experience in the field of Computer Science."**

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

First, the evaluation states that it is partially based on 8 CFR § 214.2(h)(4)(iii)(D)(5), which permits the substitution of three years of experience for one year of undergraduate education in the context of H-1B petitions. This equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. Second, the only evidence of the beneficiary's undergraduate education in the record is a transcript for one year of study at the University of Belgrade. There is no evidence in the record that the beneficiary completed three years of undergraduate study. Third, it does not appear that the beneficiary obtained nine years and seven months of progressively advanced work experience in the field of computer science as is stated in the evaluation. The employment experience letter of [REDACTED] states that the beneficiary was employed with the company from September 1, 1989 to April 1, 1999. The letter states that the beneficiary held the following positions with the company: assistant programmer, junior partner, Manager of Sales Department, and Manager of Sales and

Support. His duties included "inspecting, receiving and shipping RMA equipment," "repairing or refurbishing of PS systems or supervising those procedures," "technical support on the phone," mass media duplications, CD production, "train[ing] several young executives to manage phone and e-mail inquiries," distributing computer hardware, "making estimates and proposals for individual systems," and importing and sales of computer products. Although the beneficiary did perform duties related to the offered position during his time with the company, a substantial amount of his duties related to sales management. Therefore, the evaluator's claim that the beneficiary's experience constitutes nine years and seven months of progressively advanced work experience in the field of computer science is not credible. For these reasons, the AAO does not accept the submitted evaluation of the beneficiary's credentials as establishing that the beneficiary has the equivalent of a U.S. bachelor's degree in computer science.

In conclusion, the petitioner did not establish that the beneficiary has MCSE certification; the petitioner did not establish that the beneficiary completed three years of undergraduate education at the University of Belgrade; and the submitted academic credentials evaluation lacks sufficient credibility to establish that the beneficiary has a U.S. bachelor's degree in computer science.

In view of the foregoing, the previous decision of the director will be withdrawn. The petition is remanded to the director for consideration of the issues stated above.

**ORDER:** The director's decision is withdrawn; however, the petition is currently not approvable for the reasons discussed above, and therefore the AAO may not approve the petition at this time. Because the petition is not approvable, the petition is remanded to the director for issuance of a new decision.