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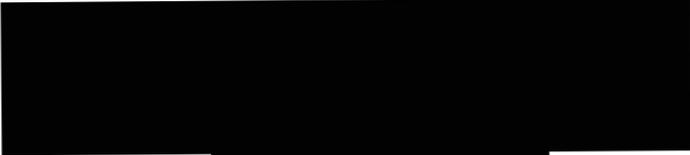
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
and Immigration  
Services

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FILE:

SRC 07 001 54239

Office: TEXAS SERVICE CENTER

Date:

MAR 10 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)

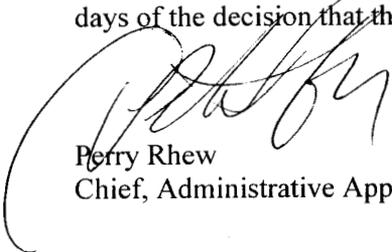
ON BEHALF OF PETITIONER:



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.

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 or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

  
Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 describes itself as a diversified firm. It seeks to employ the beneficiary permanently in the United States as a systems architect and analyst. A Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary's credentials did not satisfy the minimum level of education stated on the labor certification and denied the petition accordingly.

On appeal, the petitioner, through counsel, contends that the beneficiary's educational credentials satisfied the terms of the labor certification in that it may be approved as a skilled worker.

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).

It is noted that the AAO issued a request for evidence on March 4, 2009, relevant to whether the beneficiary's educational qualifications as contained in the record satisfied the requirements of the ETA 750. The petitioner was permitted twelve weeks to respond. On January 11, 2010, the AAO issued a notice of intent to deny, noting that the petitioner had not responded to the request for evidence relating to the beneficiary's educational qualifications and further observing that the state online database indicated that the petitioning business had not maintained the required status of good standing.

The petitioner responded to the AAO's notice of intent to deny with a letter dated February 3, 2010, signed by the petitioner's president, [REDACTED]. Mr. [REDACTED] enclosed a current certificate of good standing and a copy of a recent payroll invoice supporting its current business standing. [REDACTED] additionally states the following regarding the petitioner's lack of response to the AAO's request for evidence:

When we filed the appeal on May 21, 2007 [the beneficiary], was working fulltime for [the petitioner] as the Director of Systems Development/Chief Systems Architect. As of May 21, 2007, [the beneficiary] had been continuously employed by [the petitioner] since June 2001.

When [the petitioner] received a request for evidence on March 4, 2009, it did not file a response since [the beneficiary], had left the company in November 2007. [The petitioner] had no reason to pursue the appeal on March 4, 2009 since the beneficiary had no intention of returning to work for the company.

It is noted that [REDACTED] does not request a withdrawal of the petition sponsoring the beneficiary. However, he also states that the beneficiary had no intention to return to work for the petitioner. Further, this response does not address any of the issues raised in the AAO's previous request for evidence. Based on this correspondence, the AAO concludes that the beneficiary no longer intends to work for the petitioner and that the preference petition is no longer supported by a *bona fide* job offer for this beneficiary. See *Spyropoulos v. INS*, 590 F.2d 1 (1<sup>st</sup> Cir. 1978). For this additional reason, the appeal will be dismissed. 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 at 1002 n. 9. (Noting that the AAO reviews appeals on a *de novo* basis).

However, for the reasons discussed below, we additionally concur with the director's decision that the record fails to establish that the petitioner demonstrated that the beneficiary's educational credentials failed to satisfy the minimum level of education as stated on the labor certification is qualified for the job offered.

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.

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date which is the day the Form ETA 750 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 Form ETA 750 was accepted for processing on June 17, 2003.<sup>1</sup>

The Immigrant Petition for Alien Worker (I-140) was filed on September 28, 2006. Part 5 of the petition indicates that the petitioner was established in 1994, claims a gross annual income of \$4.6 million dollars, a net annual income of \$650,000 and currently employs 55 workers.

Item 14 of the Form ETA 750 sets forth the minimum requirements for the position of a systems architect and analyst. The proffered position requires four years of college culminating in a

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<sup>1</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, including a prospective U.S. employer's ability to pay the proffered wage is clear.

Bachelor's degree (or Foreign Equiv.) in Computer Science or related field. The job also requires five years of experience in the job offered or five years in a related occupation specified as an analyst programmer.

Other special requirements are set forth on Part 15 of the ETA 750: including "Java, ERP, OOD/OOP, J2EE, DB2, Lang. design & Implementation, Cross Lang. Integration, Web Applications."

The job duties are described in Item 13 of the ETA 750. They include "[b]usiness process analysis, requirement analysis, systems architecture planning, execution, establishing standards, project management."

In determining whether a beneficiary is eligible for a preference immigrant visa, USCIS must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As stated on the labor certification, the proffered position of systems architect and analyst requires four years of college and a Bachelor's degree (or Foreign Equiv.) in Computer Science or a related field of study.

It is noted in the AAO's request for evidence, although the record contains the beneficiary's U.S. Bachelor of Science in Computer Science from Arizona State University, this degree was not awarded until December 16, 2004, which is after the June 17, 2003, priority date. Therefore, this degree may not be considered. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).

DOL assigned the occupational code of 030.262-010, to the proffered position. The DOT code assigned to the proffered position is analogous to 15-1099.01, Software Quality Assurance Engineers and Testers. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/link/summary/15-1099.00><sup>2</sup> and extensive description of the position and requirements for the job, 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

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<sup>2</sup> (Accessed 03/05/10).

bachelor's degree, but some do not." *See id.* 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.*

More specific to this position, O\*NET provides that 68 percent of responding software quality assurance engineers and testers have a bachelor's degree or higher.

Based on the position's job title, job duties, the educational requirements as set forth on the Form ETA 750, the SVP identified by DOL, the majority percentage of respondents that have a bachelor's degree or higher, the job in this case would be characterized as a professional position. It is also noted that the petitioner's correspondence dated September 6, 2006, indicates that it considered the position to be a professional job. Additionally, however, the petitioner has not established that the petition would be eligible for approval as a skilled worker.

The regulation at 8 C.F.R. § 204.5(l)(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 Form ETA 750 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 (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 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).

As noted in the request for evidence issued by the AAO, in corroboration of the Form ETA 750, the petitioner provided copies of the following relevant to the beneficiary's education:

- 1) An international diploma in computer studies indicating that the beneficiary attended a course given by [REDACTED], Sri Lanka, and moderated by The National Centre for Information Technology. The diploma is dated September 14, 1991. The accompanying grade transcript indicates that the course was completed in June 1991. There is no indication when the course started.
- 2) Copies of documents from The British Computer Society indicating that the beneficiary passed the Part I examination in 1995 and passed the Part II examination in 1998. A copy of an undated document indicates that the beneficiary's new membership card is attached and a copy of a membership card in The British Computer Society indicates that the beneficiary's level of membership is "graduate."

An academic equivalency evaluation from The Trustforte Corporation determined that the beneficiary's international diploma in computer studies given by [REDACTED] Sri Lanka and moderated by The National Centre for Information Technology is the equivalent of "concentrated post-secondary studies in the field of Computer Science at an accredited US college or university." The evaluation also determined that the beneficiary's passage of Parts I and II examination(s) of The British Computer Society represents the attainment "equivalent of at least a Bachelor of Science Degree in Computer Science from an accredited U.S. college or university." The evaluation then indicates that the beneficiary's combined credentials consisting of the diploma from [REDACTED], Sri Lanka and moderated by The National Centre for Information Technology as well as passage of Parts I and II of the Examinations administered by The British Computer Society, also indicate at least the U.S. equivalent of a Bachelor of Science degree in Computer Science from an accredited college or university in the United States.

In the AAO's request for evidence, the petitioner was advised that the AAO had reviewed 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](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."

EDGE provides a great deal of information about the educational system in Sri Lanka. While it discusses credentials such as certificates, advanced certificates, and diplomas, but describes these credentials as predicated on studies at a university, not a vocational or technical institute. There is no evidence in the record that the beneficiary's international diploma in computer studies represents the U.S. equivalent of a bachelor's degree in computer science. Additionally, ' [REDACTED] ' is not listed as a recognized university, post-graduate institute, or even educational or training institute under the University Grants Commission or Ministry of Education. It is also noted that the Trustforte evaluation failed to identify the quantity of university level study the beneficiary's international diploma was supposed to represent or document. 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. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this case, we do not conclude that the conclusions of the Trustforte evaluation are probative of the beneficiary's educational qualifications.

In order to resolve the issues in the record, it is noted that the AAO requested the petitioner to provide: 1) evidence that the beneficiary has attended four years of college or university culminating in a bachelor of science degree in computer science or a related field; 2) evidence documenting when the beneficiary's attendance at [REDACTED] commenced; 2) evidence that this diploma represents a foreign equivalent of a U.S. bachelor of science degree in computer science or a related field of study; and 3) first hand-evidence showing that, during the beneficiary's attendance, [REDACTED] was a recognized college or university by the Ministry of Education or University Grants Commission in Sri Lanka empowered to award baccalaureate accredited hours.

The AAO also requested that the petitioner provide additional evidence that the beneficiary's membership in The British Computer Society, that passage of Part(s) I and II of the examinations administered by this entity represents the U.S. equivalent of at least a Bachelor of Science degree in computer science from an accredited college or university. The petitioner was asked to submit 1) all statement of marks or grade transcripts relating to the beneficiary's credentials from this entity; 2) first-hand evidence of the admission requirements in order to seek accreditation from The British Computer Society at the time of the beneficiary's exams 3) first-hand evidence of the source document used to determine that passage of Part(s) I and II of the entity's examinations represented the U.S. equivalent of a bachelor of science degree in computer science; and 4) first hand evidence that this entity represents an institution empowered to award baccalaureate degrees.

As the petitioner failed to respond to these requests, these issues were not resolved. 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. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). USCIS may, in its discretion, use advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). USCIS, however, is ultimately

responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* 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 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

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 combination of an international diploma from an unrecognized entity in combination with the membership in The British Computer Society 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). 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," the beneficiary does not qualify for preference visa classification under section 203(b)(3) of the Act as he does not have the minimum level of education required for the foreign equivalent of a bachelor's degree. Moreover, the petitioner failed to delineate any acceptable equivalency on the ETA 750 such as in Item 15 where other requirements are permitted to be stated.

The petitioner was also requested to provide evidence of its recruitment efforts in order to demonstrate whether it communicated to otherwise available qualified U.S. workers that some other kind of combination of certificates, diplomas or degrees were acceptable to qualify for the offered position. As noted above, the petitioner, did not respond to the AAO's request for evidence. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Even if this job could also be considered in the skilled worker category as defined in section 203(b)(3)(A)(i) of the Act, the beneficiary must still meet the terms set forth on the labor certification. 8 C.F.R. § 204.5(l)(3)(B). Additionally, in such a case, USCIS will also examine whether the petitioner's intent to accept some other form of an academic equivalency was communicated to DOL and to U.S. workers in the labor market test.

For this qualification, a beneficiary must meet the petitioner's requirements as stated on the labor certification in accordance with 8 C.F.R. § 204.5(l)(3)(ii)(B), which provides that:

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

The beneficiary is not eligible for a skilled worker classification in this case. As mentioned above, the record supports a finding that the certified position was appropriately classified as a professional by the petitioner's intent expressed in the record, the job title, job duties, the educational requirements as set forth on the Form ETA 750, and the majority percentage of software quality assurance engineers and tester respondents that have a bachelor's degree or higher as indicated in O\*Net.

We are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d, 1174 (D. Or. 2005) which found 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* at \*8 (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 CIS, 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). In reaching this decision, the court also concluded that the employer in that case tailored the job requirements to the employee and that DOL would have considered the beneficiary's credentials in evaluating the job requirements listed on the labor certification.<sup>3</sup>

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<sup>3</sup> Specifically, as quoted above, the regulation at 20 C.F.R. § 656.21(b)(6) requires the employer to "clearly document . . . that all U.S. workers who applied for the position were rejected for lawful job related reasons." BALCA has held that an employer cannot simply reject a U.S. worker that meets the minimum requirements specified on the Form ETA-750. *See American Café*, 1990 INA 26 (BALCA 1991), *Fritz Garage*, 1988 INA 98 (BALCA 1988), and *Vanguard Jewelry Corp.* 1988 INA 273 (BALCA 1988). Thus, the court's suggestion in *Grace Korean* that the employer tailored the job requirements to the alien instead of the job offered actually implies that the recruitment was unlawful. If, in fact, DOL is looking at whether the job requirements are unduly restrictive and whether U.S. applicants met the job requirements on the Form ETA 750, instead of whether the alien meets them, it becomes immediately relevant whether DOL considers "B.A. or equivalent" to require a U.S. bachelor degree or a foreign degree that is equivalent to a U.S. bachelor's degree. We are satisfied that DOL's interpretation matches our own. In reaching this conclusion, we rely on the reasoning articulated in *Hong Video Technology*, 1998 INA 202 (BALCA 2001). That case involved a labor certification that required a "B.S. or equivalent." The Certifying Officer questioned this requirement as the correct minimum for the job as the alien did not possess a Bachelor of Science degree. In rebuttal, the employer's attorney asserted that the beneficiary had the equivalent of a Bachelor of Science degree as demonstrated through a combination of work experience and formal education. The Certifying Officer concluded that "a combination of education and experience to

Additionally, we also note the subsequent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. November 30, 2006) that was rendered in the same district. In that case, the ETA 750 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 as a “specific level of *educational background*.” *Snapnames.com, Inc.* at \*6. Additionally, the court determined that the word ‘equivalent’ in the employer’s educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer’s intent. *Snapnames.com, Inc.* at \*14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that [USCIS] properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at \*17, 19.

It is additionally noted that in *Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) (D.C. Cir. March 26, 2008) the court upheld an interpretation that a “bachelor’s or equivalent” requirement necessitated a single four-year degree in a professional category and additionally noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) required skilled workers to submit evidence that they meet the minimum job requirements of the individual labor certification. In that case, the ETA 750 described the educational requirement as Bachelor’s or equivalent” and that it required a four-year education. The court additionally upheld the USCIS denial in this context as well, where it would

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meet educational requirements is unacceptable as it is unfavorable to U.S. workers.” BALCA concluded:

We have held in *Francis Kellogg, et als.*, 94-INA-465, 94 INA-544, 95-INA-68 (Feb. 2, 1998 (en banc) that where, as here, the alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chose to list alternative job requirements, the employer’s alternative requirements are unlawfully tailored to the alien’s qualifications, in violation of [20 C.F.R.] § 656.21(b)(5), unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable. Therefore, the employer’s alternative requirements are unlawfully tailored to the alien’s qualifications, in violation of [20 C.F.R.] § 65[6].21(b)(5).

In as much as Employer’s stated minimum requirement was a “B.S. or equivalent” degree in Electronic Technology or Education Technology and the Alien did not meet that requirement, labor certification was properly denied.

have necessitated the combination of the alien's other credentials with his three-year diploma to meet the requirements of the ETA 750. *Id.* at \*13-14.

In this case, the beneficiary must possess four years of college culminating in a Bachelor's degree (or foreign equivalent) in Computer Science or a related field of study. The petitioner failed to specify any defined equivalency on the Form ETA 750. The beneficiary's formal education does not equate to the requisite four-year degree. A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, in this case, the beneficiary's international diploma from [REDACTED] and the membership in The British Computer Society does not satisfy the requirements of the labor certification in either a professional or skilled worker category. Further, as noted above, the petitioner also failed to respond to the AAO's request for evidence relevant to the beneficiary's international diploma and membership in The British Computer Society. The petitioner similarly failed to respond to the AAO's request for evidence of its recruitment efforts in order to demonstrate if it communicated its intent to otherwise qualified U.S. workers that it would accept some kind of lesser combination of diplomas or certificates in lieu of a Bachelor's degree in Computer Science or a related field as required on the ETA 750.

It is noted that as referenced in *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984), USCIS is obliged to "examine the certified job offer *exactly* as it is completed by the prospective employer." (Emphasis added). USCIS' 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).

The beneficiary's educational credentials do not meet the terms of the labor certification whether considered for a preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional or as a skilled worker under 203(b)(3)(i) of the Act.<sup>4</sup>

Moreover, the petitioner failed to provide corroboration in the form of employment verification letters that the beneficiary possessed the required five years of full-time experience in the job offered of systems architect and analyst or five years of full-time experience in the related occupation of analyst programmer as of the priority date of June 17, 2003.<sup>5</sup> It also failed to submit evidence that the beneficiary had acquired the computer skills as set forth in the special requirements described in Item 15 of the ETA 750 as of the priority date.

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<sup>4</sup> A skilled worker category requires that a petitioner must show that a beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification." Here, nothing demonstrates that the beneficiary has the required four years of college education resulting in a Bachelor's degree in the required field.

<sup>5</sup> The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) requires that claims of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

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 at 1002 n. 9. (Noting that the AAO reviews appeals on a *de novo* basis).

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

**ORDER:** The appeal is dismissed.