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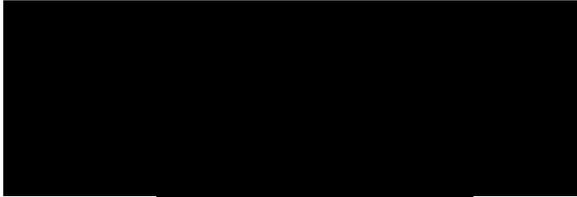
U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Office of Administrative Appeals, MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE: [REDACTED]  
LIN 06 214 51767

Office: NEBRASKA SERVICE CENTER

Date: **MAR 12 2010**

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

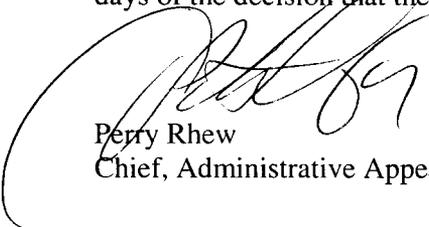
ON BEHALF OF PETITIONER:



**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, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an international bank. It seeks to employ the beneficiary permanently in the United States as a programmer analyst (financial applications). 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 did not satisfy the minimum level of education stated on the labor certification and denied the petition accordingly.

On appeal, the petitioner, through counsel, submits additional evidence and contends that the beneficiary's educational credentials satisfied the terms of the labor certification.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

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 August 12, 2002.<sup>1</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on July 14, 2006.

The Item(s) 14 and 15 of the Form ETA 750, set forth the minimum requirements for the position of a programmer analyst (financial applications) The proffered position requires four years of college culminating in a B.S. degree in Computer Science. Item 14 also requires five years of work

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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.

experience in the job offered or five years of experience in a related occupation defined as a programmer/analyst. Item 15 states that the applicant's job experience must include two years of experience analyzing, designing & writing programs for financial applications with Visual Basic, Access, SQL server, and COM/DCOM and solid experience in Visual C++, MS Cobol, Oracle, ASP, HTML, Visual Interdev, and Crystal Reports 7. The job duties are set forth on Part 13 of the ETA 750 and are described as follows:

Analyze, design, develop, test programs for financial applications; document programs; design database; maintain & modify applications; provide technical support; install security measures; train users; generate reports using Crystal Reports 7 & ensure compatibility of applications with other financial systems.

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. *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 programmer analyst (financial applications) requires four years of college culminating in a B.S. degree in Computer Science.

DOL assigned the occupational code of 15-1031, programmer analyst, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at 15-1031.00 for computer software engineers, applications, which is the analogous position described at <http://online.onetcenter.org/link/summary/15-1031.00><sup>2</sup> and the 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 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.

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<sup>2</sup> (Accessed 11/18/09).

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 85 percent of responding computer software engineers, applications have a bachelor's degree or higher.<sup>3</sup> Further, DOL's Occupation Outlook Handbook, available online at <http://www.bls.gov/oco/ocos267.htm>, provides:

**Education and Training.** Most employers prefer applicants who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. The usual college major for applications software engineers is computer science or software engineering. Systems software engineers often study computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs. In 2006, about 80 percent of workers had 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 experiential requirements of five years in the job offered or in a related occupation, the SVP identified by DOL, and the majority percentage of respondents that have a bachelor's degree or higher, the job in this case would be classified as a professional position. Further, in its correspondence with DOL, dated August 5, 2002, as provided in the response to the AAO's request for evidence, the job is clearly considered as a professional position entailing "complex investment banking formulations and financial applications." Additionally, however, the petitioner has not established that the petition would be eligible for approval as a skilled worker as asserted by counsel on appeal.

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.

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<sup>3</sup>See <http://online.onetcenter.org/link/details/15-1031.00>.

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. Thus, at the outset, it is useful to discuss 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 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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<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).

Therefore, it is DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of USCIS to determine if the petition and the alien beneficiary are eligible for the classification sought. For classification as a member of the professions, the regulation at 8 C.F.R.

§ 204.5(l)(3)(ii)(C) requires that the alien had a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation requires the submission of “an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study.” (Emphasis added.)

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (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).

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>5</sup>

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<sup>5</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

We also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Id.* at 11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Id.* at 14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at 17, 19. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the ETA 750 and does not include alternatives to a four-year bachelor's degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien

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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 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.

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.*

However, 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 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 have four years of college and possess a B.S. degree in Computer Science. The petitioner failed to specify any defined equivalency on the Form ETA 750.

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

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

*States*, 819 F.2d. 1289, 1295 (5<sup>th</sup> Cir. 1987). It can be presumed that Congress' narrow requirement of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that member of the profession must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate, we could not consider education earned at an institution other than a college or university.

In this matter, on Part B of the Form ETA 750, signed by the beneficiary on August 8, 2002, the beneficiary indicated the highest level of education that she achieved relevant to the requested occupation is a three-year Bachelor's degree in Chemistry from the University of Bombay, India and an advanced diploma in systems analysis and programming from the State Board of Technical Exams, Maharashtra, India.

The petitioner, through counsel, submitted a copy of a Bachelor of Science degree from the University of Bombay, Mumbai, India, in chemistry (three-year integrated course), along with a copy of a "transcript certificate" indicating that the beneficiary completed a three-year degree in 1988. A copy of the original marks certificate from April 1988 also reflected that the beneficiary's degree represented a three-year program. Counsel additionally provided a copy of an "Advanced Diploma in Computer Software Systems Analysis & Applications issued by the Board of Technical Examinations, Maharashtra State, India and awarded to the beneficiary on July 23, 1992. The accompanying marks transcript indicates that it represented a two semester program that represented the beneficiary's enrollment in 1990.

In response to the AAO's request for evidence, counsel submitted a chart of available courses offered by the Maharashtra State Board of Technical Education in Mumbai. It is noted that the chart does not represent the available courses during the time of the beneficiary's enrollment but for the 2007-2008 academic year. It indicates that for that year, 2007-2008, the entry qualification for a course named "Advance Diploma in Computer Software System Analysis & Application" is "[a]ny diploma in engineering or technology / any degree." This was submitted by counsel in response to the AAO's request for evidence instructing the petitioner to submit evidence of the admission requirements during the period that the beneficiary studied there.

As advised by the AAO the record contains a credentials evaluation from [REDACTED] of [REDACTED], which found that the beneficiary's bachelor of science degree in chemistry represented three years of academic studies transferable to a U.S. accredited university and that only when combined with the beneficiary's subsequent advanced diploma from the Maharashtra State Board of Technical Education, the two programs of study would represent the equivalent of a U.S. bachelor's degree in chemistry and computer science. Two other credentials evaluations are offered, which are authored by [REDACTED] of Career Consulting

dated April 12, 2007,<sup>6</sup> and dated April 11, 2007.<sup>7</sup> The evaluation claims that the beneficiary's three-year bachelor of science degree represents the completion of studies comparable to a "Bachelor of Science, representing 120 semester credit hours, with concentration in Computer Science from a Regionally Accredited Institution of Higher Education in the United States of America." (page 2 of April 12, 2007, evaluation). fails to mention that the beneficiary's three-year Indian degree was in Chemistry, not computer science. In a separate evaluation, dated April 12, 2007, determines that the beneficiary's advanced diploma in computer software systems analysis and applications represents the equivalent of a U.S. Master of Science degree in Computer Science.

The evaluation, using identical language as determines that the beneficiary's three-year Indian bachelor of science degree represents a "[B]achelor's degree, representing 120 semester credit hours, from a Regionally Accredited Institution of Higher Education in the United States of America." No field of study is designated in this conclusion that somehow equates the beneficiary's three-year bachelor's degree in Chemistry with a four-year U.S. baccalaureate in computer science. However, the evaluation also determines that the beneficiary's advanced diploma in computer software systems analysis and applications represents not only the U.S. equivalent of the completion of a "Bachelor of Science, representing 120 semester credit hours, with concentration in Computer Science from a Regionally Accredited Institution of Higher Education in the United States of America," but also represents a U.S. Master of Science degree in Computer Science.

It is noted that the evaluations do not appear to concur as to the admission requirements necessary to obtain the beneficiary's diploma in computer software systems analysis & applications. suggests that high school graduation is the prerequisite and states that a bachelor's degree is the requirement. In a revised evaluation, dated November 13, 2008, and submitted with the petitioner's response to the AAO's request for evidence, now states that the beneficiary's credential from the Board of Technical Examinations required a bachelor's degree for admission. 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. 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. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

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<sup>6</sup> indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure Robert de Sorbon but does not indicate the field in which she obtained her doctorate. According to its website, [www.sorbon.fr/index1.html](http://www.sorbon.fr/index1.html), Ecole Superieure Robert de Sorbon awards degrees based on past experience.

<sup>7</sup> indicates that 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.

As advised in the AAO's request for evidence, in determining whether the beneficiary's three-year Indian Bachelor of Science is a foreign equivalent degree, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO).<sup>8</sup> 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/>, EDGE is "a web-based resource for the evaluation of foreign educational credentials." 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 also 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.

With respect to Post Secondary Diplomas, for which the entrance requirement is completion of a secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate, EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further states that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

As noted above, an evaluation, dated April 11, 2007 is submitted from [REDACTED], provides an educational evaluation dated April 12, 2007. As noted above, she also submits a partially revised evaluation, which was provided with the petitioner's response to the AAO's request for evidence, in which the admission requirements to the beneficiary's Maharashtra State Board of Technical Examinations was changed, without explanation, to that of a bachelor's degree instead of graduation from high school. It is incumbent on the petitioner to resolve any inconsistencies in the record by

<sup>8</sup> In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

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. *See Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

Both evaluations currently claim that the beneficiary's three-year bachelor's degree in Chemistry from the University of Bombay is, standing alone, equivalent to a Bachelor of Science degree, representing 120 semester credit hours, with a concentration in Computer Science from a regionally accredited Institution in Higher Education in the United States. Neither evaluation mentions that the beneficiary's three-year degree was in chemistry not computer science. Both evaluations further claim that the beneficiary's subsequent advanced diploma from the Maharashtra State Board of Technical Education in Mumbai represents a master of science in computer science, with Kersey additionally advocating that it also represents the U.S. equivalent of a bachelor of science in computer science.

The fundamental argument of both 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 a 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.<sup>9</sup> For example, 120 hours of classroom time was determined to 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.<sup>10</sup> 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.<sup>11</sup> 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."<sup>12</sup> Neither evaluation makes an attempt to assign credits for the beneficiary's

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<sup>9</sup>The 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." <http://www.carnegiefoundation.org/about/index.asp> (accessed September 18, 2009).

<sup>10</sup><http://www.carnegiefoundation.org/about/sub.asp?key=17&subkey=1874> (accessed September 18, 2009).

<sup>11</sup>*Id.*

<sup>12</sup>*Id.*

individual courses, and merely concludes that the beneficiary's three-year bachelor of science degree is equivalent to a U.S. bachelor's degree.

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 degrees allegedly require an equivalent amount of classroom time. The evaluations fail to provide any peer-reviewed material (or other reliable evidence) confirming that assigning credits based on hours spent in the classroom is applicable to evaluating three-year bachelor of science degrees from India. 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.<sup>13</sup>

Both evaluations also assert 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." In support of this claim, reference is made to the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. 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 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. The United States was not a member of UNESCO between 1984 and 2002, 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.<sup>14</sup> Specifically, the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993 contains the language relating to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

"Recognition" of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State and deemed comparable, for the purposes of access to or further pursuit of

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<sup>13</sup>See *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](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).

<sup>14</sup>See <http://www.unesco.org> (accessed September 18, 2009).

higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

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." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue. The AAO would additionally note that programs that allow students to work at an accelerated pace do not establish that a typical three-year Indian degree is equivalent to a four-year baccalaureate U.S. degree or even an accelerated U.S. program.

evaluations are not probative of the beneficiary's formal education and are not supported by the record of proceedings in suggesting that the entry requirement to obtain an advanced diploma in computer software system analysis & application is a bachelor's degree. As stated above, the entry requirement on the chart provided by counsel that references entry requirements for the 2007-2008 academic year of the Maharashtra State Board of Technical Education merely states that the entry requirement is "[a]ny diploma in Engineering or Technology / Any Degree. In other parts of the chart, when a bachelor's degree is required as a prerequisite to entrance into a given program, then for example, it states that "B. Sc," or "Any B.Sc.," or "Any Graduate (B.A./B.com/B.Sc/B.Pharmacy/ B.Sc. HMCT)." We do not find that counsel's assertion that it is clear that a bachelor's degree was the entry requirement necessary to obtain an advanced diploma in computer software system analysis & application when the beneficiary attended the program of study in 1990 is persuasive. This office elects to rely on the EDGE advisory of the equivalency of the beneficiary's Bachelor of Science degree. There is no suggestion in EDGE that it may be considered as a foreign equivalent degree to a U.S. baccalaureate. It may not be concluded that the evaluations provided by the petitioner are probative of whether the beneficiary's Bachelor of Science in Chemistry degree represents a foreign equivalent degree. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id. 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)).

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. 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). No combinations amounting to such an equivalency were defined on the ETA 750. 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,” as of the priority date of August 12, 2002, the beneficiary does not qualify for preference visa classification under section 203(b)(3) of the Act as she does not have the minimum level of education required for the equivalent of a bachelor’s degree. Even if considering at most, the beneficiary’s attainment of three years of undergraduate university studies represented by the Bachelor of Science degree, this would not qualify as full Bachelor of Science degree as indicated on the Form ETA 750 in the required field of study. Neither would the beneficiary’s “advanced diploma” qualify her for the position individually. Moreover, the petitioner failed to delineate any acceptable equivalency on the ETA 750 such as in Item 15 where other requirements relating to her experience were stated.

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, and as advocated by counsel on appeal, 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 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.

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 engineering respondents that have a bachelor’s degree or higher as indicated in O\*Net. It is noted that as referenced in *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, at 833, 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 petitioner provided copies of three newspaper advertisements for the proffered job of programmer analyst/financial applications. The newspaper ads and the copy of the internal job notice of posting

stated “req. BS CS or foreign equiv & 5 yrs in the job incl 2 yrs. . .” The copy of the online postings provided to the record similarly stated, “[r]eq BS Computer Science or foreign equivalent and 5 yrs experience in job including at least 2 yrs. . .” The ads state “foreign equivalent” and do not set forth any equivalency based on a specific combination of degrees, diplomas or certificates that would be acceptable in lieu of a four-year B.S. degree in Computer Science as required on the ETA 750. Further, even if considered as a skilled worker, 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>15</sup> The petitioner has not established that the beneficiary has a four-year single source Bachelor of Science degree in Computer Science as required by the terms of the labor certification. Additionally, the evaluations submitted contain differing information with no explanation to account for the inconsistencies.

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.

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<sup>15</sup> As noted above, 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.”