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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:

[REDACTED]  
LIN 07 015 52822

Office: NEBRASKA SERVICE CENTER

Date:

**MAR 12 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, 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 a computer project service and software consulting company. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, a Form ETA 750,<sup>1</sup> Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

The 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.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on November 7, 2002.<sup>2</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on October 19, 2006.

The job qualifications for the certified position of programmer analyst are found on Form ETA 750 Part A. Item 13 describes the job duties to be performed as follows:

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<sup>1</sup> After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089. *See* 20 C.F.R. § 656.17(a)(1).

<sup>2</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

Provide software solutions for mainframe and/or midframe systems. Customize program applications. Assist in implementing updated portions to systems and to software by installing & testing programs at client-user sites based on employee's review of system. Make modifications as determined by employee's review of user requirements and systems makeup and condition. Will review & modify program to increase operating efficiency and adapt to new requirements. Will provide software support to clients, including testing and debugging – as well as replacing, deleting, or modifying codes to correct errors.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education (number of years)

Grade school	grad.
High school	grad.
College	Completion
College Degree Required	Bachelor's Degree or Equiv.
Major Field of Study	Computer Science or related *

\* Related includes, but not limited to: Information Science or Technology, MIS, Physics, Engineering, Mathematics, Statistics, or Business/ Business Administration/Commerce.

Experience:

Job Offered (or) Related Occupation	2 years  2 years as Programmer, or Systems Analyst, or DBA, or related
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Block 15:

Other Special Requirements	Must have paid exp. in one item from each of the following areas: 1. Operating system: MS-DOS, or UNIX or equiv., or Windows; 2. Relational Database: Oracle, or Sybase, or Informix or equiv., or SQL Server; 3. GUI Tool: Visual Basic, or Powerbuilder or equiv.; 4. Automated Testing Tool: Winrunner, or Loadrunner,
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or SQA Robot; 5. Case Tool: Erwin, or Turbo Analyst.

As set forth above, the proffered position requires four years of college culminating in a Bachelor's degree in computer science, information science or technology, MIS, physics, engineering, mathematics, statistics, or business/business administration/commerce and two years of experience in the job offered or in the related occupation of programmer, systems analyst, or database administrator.

On the Form ETA 750B, signed by the beneficiary on October 2, 2002, the beneficiary listed his prior education as: Bachelor of Science degree in Mathematics from C. Abdul Hakeem College, Madras University, India and Diploma in Systems Analysis and Data from Annamalai University, Chidambaram, Tamil Nadu South India. The Form ETA 750B also reflects the beneficiary's experience as follows: June 1999 to present (October 2002) with the petitioner, computer programmer-analyst; April 1998 to June 1999 System Administrator; and May 1989 to March 1998 Senior Systems Analyst.

In support of the beneficiary's educational qualifications, the record contains a copy of the beneficiary's diploma from the University of Madras. It indicates that the beneficiary completed examinations in December 1981 and was awarded a Bachelor of Science degree in Mathematics. The record also contains a copy of two credentials evaluations from [REDACTED] and [REDACTED]. Both evaluations conclude that the beneficiary's three-year bachelor's degree is equivalent to a four-year Bachelor of Science in the United States.

The director denied the petition on August 17, 2007. He determined that the beneficiary's bachelor of science degree could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree because the petitioner submitted no evidence showing that it intended a foreign three-year degree to be equivalent to the four-year U.S. degree. Further, no evidence in the record otherwise indicated that the beneficiary's three-year degree was equivalent to a four-year U.S. bachelor's degree.

On September 3, 2009, the AAO issued a Notice of Intent to Deny (NOID) to the petitioner stating that the evidence in the record was insufficient to establish that the beneficiary had the equivalent of a four-year U.S. bachelor's degree. The petitioner submitted its response on September 30, 2007.

Part A of the ETA 750 indicates that the DOL assigned the occupational code of 030.162-014, computer software engineer, applications to the proffered position. 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/15-1051.00> (accessed November 17, 2009 under 15-1051.00, DOL's updated correlative occupation) and its description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four requiring considerable preparation for the occupation type closest to the proffered position.

According to DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. DOL assigns a standard vocational preparation (SVP) range of 7-8 to Job Zone 4 occupations, which means “[m]ost of these occupations require a four-year bachelor’s degree, but some do not.” See <http://online.onetcenter.org/link/summary/15-1051.00> (accessed November 17, 2009). 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.* Because of the requirements of the proffered position and DOL’s standard occupational requirements, the proffered position is for a professional, but might also be considered under the skilled worker category.

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

The regulation at 8 C.F.R. 204(5)(l)(3)(ii)(B) states the following:

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

The above regulation requires that the alien meet the requirements of the labor certification.

Because the petition's proffered position qualifies for consideration under both the professional and skilled worker categories, the AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional category.

Initially, however, we will provide an explanation of the general process of procuring an employment-based immigrant visa and the roles and respective authority of both agencies involved.

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>3</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

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<sup>3</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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).

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

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

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Counsel's argument that the petitioner's requirement that the bachelor's degree be completed as

opposed to specifying a number of years of college on the Form ETA 750 is unavailing. The term “bachelor’s degree” is understood to mean a “United States baccalaureate degree or a foreign equivalent degree” unless the petitioner provides some sort of other understanding of the term on the Form ETA 750 or in its advertisements for the job. As the petitioner failed to delineate any defined equivalency, as discussed *infra*, the common definition must be used and the *Shah* precedent applies.

Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree,” from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor’s degree.

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that USCIS “does not have the authority or expertise to impose its strained definition of ‘B.A. or equivalent’ on that term as set forth in the labor certification.” In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *Id.* at 719. The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church*, 437 F. Supp. 2d at 1179 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The district court determined that ‘B.S. or foreign equivalent’ relates solely to the alien’s educational background, precluding consideration of the alien’s combined education and work experience. *Snapnames.com, Inc.* at \*11-13. Additionally, the court determined that the word ‘equivalent’ in the employer’s educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer’s intent. *Snapnames.com, Inc.* at \*14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at \*17, 19.

In the instant case, like the labor certification in *Snapnames.com, Inc.*, the petitioner included an “equivalency” possibility to the bachelor’s degree requirement. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements.<sup>4</sup> *Id.* at \*7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner’s asserted intent, USCIS “does not err in applying the requirements as written.” *Id.* See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008) (upholding an interpretation that a “bachelor’s or equivalent” requirement necessitated a single four-year degree). In this matter, the Form ETA 750 does not specify what an equivalency to a bachelor’s degree is. In

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<sup>4</sup> In response to the NOID, counsel states that DOL understood that the petitioner would accept a degree from a foreign country of less than four years in duration during the labor certification process and, therefore, the beneficiary’s degree would be sufficient under the terms of the labor certification. As stated *supra*, DOL’s role in the labor certification process does not include deciding whether a particular alien qualifies for a specific immigrant classification. See *Madany*, 696 F.2d at 1012-1013; *K.R.K. Irvine, Inc.*, 699 F.2d at 1009; *Tongatapu Woodcraft Hawaii, Ltd.*, 736 F. 2d at 1309. The U.S. Department of Labor (DOL) has provided the following field guidance: when the Form ETA 750 indicates, for example, that a “bachelor’s degree in computer science” is required, and the beneficiary has a four-year bachelor’s degree in computer science from the University of Florence, “there is no requirement that the employer include ‘or equivalent’ after the degree requirement” on the Form ETA 750 or in its advertisement and recruitment efforts. See Memo. from ██████████ Adminstr., U.S. Dep’t. of Labor’s Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep’t. of Labor’s Empl. & Training Administration, Interpretation of “Equivalent Degree,” 2 (June 13, 1994). Further, where the Form ETA 750 indicates that a “U.S. bachelor’s degree or the equivalent” may qualify an applicant for a position, where no specific terms are set out on the Form ETA 750 or in the employer’s recruitment efforts to define the term “equivalent”, “we understand [equivalent] to mean the employer is willing to accept an equivalent foreign degree.” See Ltr. From ██████████, U.S. Dept. of Labor’s Empl. & Training Administration, to ██████████ (October 27, 1992). Where the Form ETA 750 indicates, for example, that work experience or a certain combination of lesser diplomas or degrees may be substituted for a bachelor’s degree, “the employer must specifically state on the ETA 750, Part A as well as throughout all phase of recruitment exactly what will be considered equivalent or alternative [to the degree] in order to qualify for the job.” See Memo. from ██████████. Adminstr., U.S. Dep’t. of Labor’s Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep’t. of Labor’s Empl. & Training Administration, Interpretation of “Equivalent Degree,” 2 (June 13, 1994). State Employment Security Agencies (SESAs) should “request the employer provide the specifics of what is meant when the word ‘equivalent’ is used.” See Ltr. From ██████████, U.S. Dept. of Labor’s Empl. & Training Administration, to ██████████ (March 9, 1993). Finally, DOL’s certification of job requirements stating that “a certain amount and kind of experience is the equivalent of a college degree does in no way bind [U.S. Citizenship and Immigration Services (USCIS)] to accept the employer’s definition.” *Id.* To our knowledge, the field guidance memoranda referred to here have not been rescinded. The petitioner did not submit any evidence that conveyed equivalency to the DOL and acceptance by DOL of such conveyance.

response to the NOID, counsel stated that the asterisk included in “Major Field of Study,” Part A, blank 14, indicated the petitioner’s intent to accept the beneficiary’s Bachelor of Science degree in Mathematics from Madras University and not strictly a four-year degree. Contrary to counsel’s assertion, the asterisk provided denotes that the “Major Field of Study” blank contained insufficient space to include all of the acceptable major fields of study. The information provided in this blank, and continued by the use of the asterisk contains no information about the length of degree or any defined acceptable equivalency to a four-year degree. Counsel’s assertion that the asterisk has other meaning has no support on the Form ETA 750 or in any other evidence submitted. The assertions of counsel do not constitute evidence. *Matter of Obaighbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

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

Further, the employer’s subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 14 n. 7. USCIS may look to the petitioner’s intent concerning the actual minimum educational requirements of the proffered position and evidence of how it expressed those requirements to DOL during the labor certification process.

The petitioner submitted both print and online ads for “Software Engineers, Programmer Analysts & Systems Analysts.” The print ads contain no educational or experience requirements; they do not state that the bachelor’s degree and two years of experience is required and do not contain any of the special required skills listed on the labor certification. The online advertisements state that a “Masters/Bachelor’s Degree with major field of study as Computer Science or related” is required. None of these advertisements state an equivalent, define an equivalence, or establish the petitioner’s intent to require anything less than a four-year U.S. bachelor’s degree. The recruitment reports submitted indicate that the petitioner received the majority of responses from applicants lacking the requisite experience or work authorization in the U.S. Additionally, “27 did not meet the necessary education and or experience requirements.” The petitioner provides no further detail as to how these applicants did not meet the education requirements so that the report contains no evidence of what the petitioner considered to be “equivalent” to a bachelor’s degree.

To determine 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).

The petitioner submitted an evaluation from [REDACTED] of Marquess Educational Consultants indicating that the beneficiary attained 120 credit hours from his Indian program and that his three-year degree is equivalent to a four-year U.S. degree. [REDACTED] explains that as the Indian school year is longer and requires the students to attend more hours of classes, so the amount of time in years that a degree takes in India is insufficient to determine whether the degree is equivalent to one earned in the United States. [REDACTED] goes on at length about Carnegie Units and Indian degrees in general, concluding that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate but makes no attempt to assign credits for individual courses. [REDACTED] credibility is serious diminished as he completely distorts an article by [REDACTED] and [REDACTED]. Specifically, [REDACTED] asserts that this article concludes that because the United States is willing to consider three-year degrees from Israel and the European Union, "Indian bachelor degree-holders should be provided the same opportunity to pursue graduate education in the U.S." While this is the conclusion of the article, the specific means by which Indian bachelor degree holders might pursue graduate education in the United States provided in the discussion portion of the article in no way suggests that Indian three-year degrees are, in general, comparable to a U.S. baccalaureate. Specifically, the article proposes accepting a first class honors three-year degree following a secondary degree from a CBSE or CISCE program or a three-year degree plus a post graduate diploma from an institution that is accredited or recognized by the NAAC and/or AICTE. The record contains no evidence that the beneficiary in this matter received his secondary degree from a CBSE or CISCE program. Moreover, he completed his three-year degree in the second division, not the first division. Finally, the record lacks evidence that the beneficiary completed a post graduate degree. Thus, [REDACTED]'s reliance on this article is disingenuous.

The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system.<sup>6</sup> For example, if the ratio of classroom and

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<sup>5</sup> [REDACTED] indicates he has a "canonical diploma of Sacrae Theologiae Professor" from St. David's Occumenical Institute of Divinity, which he equates to a Doctorate of Divinity.

<sup>6</sup> In response to the NOID, counsel states that the evidence submitted shows that the beneficiary completed 1900 hours, which is greater than the 1800 hours required of U.S. university students and concludes that the classroom hours prove that the beneficiary's degree is equivalent to a U.S.

outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at [http://handouts.aacrao.org/am07/finished/F0345p\\_M\\_Donahue.pdf](http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf), accessed July 30, 2009, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

also relies on an article he coauthored with . The record contains no evidence that this article was published in a peer-reviewed publication or anywhere other than the Internet. The article includes British colleges that accept three-year degrees for admission to graduate school but concedes that "a number of other universities" would not accept three-year degrees for admission to graduate school. Similarly, the article lists some U.S. universities that accept three-year degrees for admission to graduate school but acknowledges that others do not. In fact, the article concedes:

None of the members of N.A.C.E.S. who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so.

In this process, we encountered a number of the objections to equivalency that have already been discussed.

President of Educational Credential Evaluators, Inc., commented thus,

"Contrary to your statement, a degree from a three-year "Bologna Process" bachelor's degree program in Europe will NOT be accepted as a degree by the majority of universities in the United States. Similarly, the majority do not accept a bachelor's degree from a three-year program in India or any other country

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bachelor's degree regardless of the time required to obtain that degree. In support of its claim, the petitioner submits an article from arguing that the number of years that Indian degrees require are not an accurate measure of degrees' equivalency. Instead, asserts that the number of classroom hours should be considered and that certain international treaties mandate the acceptance of Indian three-year degrees as equivalent to U.S. four-year degrees. The record contains no evidence that this article was published in a peer-reviewed publication or any publication at all. The article relies upon an article co-authored by and and provides no basis for its conclusions, but instead, sets forth the numbers required of the Indian system and compares them to the numbers required by U.S. institutions. sets forth no reason why these numbers are appropriate to use in determining equivalencies.

except England. England is a unique situation because of the specialized nature of Form VI.”

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International Education Consultants of Delaware, Inc., raise similar objections to those raised by ECE.,

“The Indian educational system, along with that of Canada and some other countries, generally adopted the UK-pattern 3-year degree. But the UK retained the important preliminary A level examinations. These examinations are used for advanced standing credit in the UK; we follow their lead, and use those examinations to constitute the an [sic] additional year of undergraduate study. The combination of these two entities is equivalent to a 4-year US Bachelor’s degree.

The Indian educational system dropped that advanced standing year. You enter a 3-year Indian degree program directly from Year 12 of your education. In the US, there are no degree programs entered from a stage lower than Year 12, and there are no 3-year degree programs. Without the additional advanced standing year, there’s no equivalency.

Finally, these materials do not examine whether those few U.S. institutions that may accept a three-year degree for graduate admission do so on the condition that the holder of a three-year degree complete extra credits.

Also in support of the evaluations, the petitioner submitted the “Findings from the 2006 CGS International Graduate Admissions Survey.” On page 11 of this document, it is acknowledged that 55 percent of all institutions in the United States do not accept three-year degrees from outside of Europe. The survey does not reflect how many of the institutions that do accept three-year degrees from outside of Europe do so provisionally. If the three-year Indian baccalaureate were truly a foreign equivalent degree to a U.S. baccalaureate, it can be expected that the vast majority of U.S. institutions would accept these degrees for graduate admission without provision.

Finally, [REDACTED] relies on a UNESCO document. In support of his evaluation, the petitioner submitted 138 pages of UNESCO materials, only two of which are relevant. The relevant language relates 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 an deemed comparable, for the purposes of access to or further pursuit of 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 for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. 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.

It is important to note that 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. See <http://www.unesco.org> (accessed March 2, 2010).

UNESCO’s publication, “The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific” 82 (2d ed. 2004) (accessed on July 30, 2009 at <http://unesdoc.unesco.org/images/0013/001388/138853E.pdf>), provides:

Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in

the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. UGC, AICTE and AIU are developing criteria and mechanisms regarding the same.

*Id.* at 82. (Emphasis added.)

In its response to the NOID, the petitioner also urges us to accept the UNESCO regulations found in UNESCO Regional Conventions, specifically in the Recommendation on Criteria And Procedures for the Assessment of Foreign Qualifications (adopted by the Lisbon Recognition Convention Committee at its second meeting, Riga, 6 June 2001), *available at* [http://www.coe.int/t/dg4/highereducation/recognition/Criteria%20and%20procedures\\_EN.asp](http://www.coe.int/t/dg4/highereducation/recognition/Criteria%20and%20procedures_EN.asp). The provision cited as relevant by the petitioner states in paragraph 36 that “In the assessment of foreign qualifications, these differences should be considered in a flexible way, and only substantial differences in view of the purpose for which recognition is sought (e.g academic or de facto professional recognition) should lead to partial recognition or non-recognition of the foreign qualifications.” Nothing in this document mandates that a state accept a degree issued by an educational institution of a foreign state. In addition, this document is not a “legally binding instrument” as asserted by counsel, but instead is a recommendation “which Member States are invited to apply.”

The petitioner also submitted a credential evaluation from [REDACTED] of Career Consulting International concluding that the beneficiary holds a “Bachelor of Science, representing 120 semester credit hours.”<sup>8</sup> [REDACTED] assigned credits to the classes taken by the beneficiary “using the Carnegie Unit,” assessing a total of 120 credit hours to the beneficiary. The record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees. Moreover, the petitioner has not demonstrated that the use of this system produces consistent results, as would be expected of a workable system. According to the Carnegie Foundation’s own website, <http://www.carnegiefoundation.org/general/sub.asp?key=17&subkey=1874&topkey=17> (accessed July 30, 2009 and incorporated into the record of proceeding), the Carnegie Unit represents 120 high school hours in one subject. Fourteen “units” warrant admission to college. The website concludes: “The ‘Carnegie Unit’ does not apply to higher education.” [REDACTED] also cites to the UNESCO conventions referenced above and cites a number of British and United States colleges that accept three-year degree holders to their Master’s degree programs. It is interesting to note that [REDACTED]’s summary of some of these colleges’ requirements indicates that the beneficiary would not

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<sup>7</sup> [REDACTED] 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>8</sup> Neither evaluation assigned any education equivalence to the beneficiary’s “diploma” or other computer certificates submitted.

be eligible. For example, the summary of the requirements for the University of Manchester indicate that holders of a three-year degree “who have obtained First Class at a reputable university” are eligible for the program, however, the beneficiary did not graduate in the first class. In addition, [REDACTED] cites to the portion of the CGS’ Research Report which states that only 56% of graduate schools in the United States would accept someone with the beneficiary’s degree into their Master’s program. The sources cited by [REDACTED] support the argument that some colleges and universities accept the three-year degree, but her sources do not support her ultimate conclusion that a three-year degree is equivalent to a United States baccalaureate.

Moreover, as advised in the NOID issued to the petitioner by this office, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).<sup>9</sup> According to its website, [www.aacrao.org](http://www.aacrao.org), is “a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries.” Its mission “is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at [www.Aacrao.org/publications/guidetocreatinginternationalpublications.pdf](http://www.Aacrao.org/publications/guidetocreatinginternationalpublications.pdf). If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12.

EDGE states that a Bachelor of Science from India “represents the attainment of a level of education comparable to two to three years of university study in the United States” and not a four-year bachelor’s degree as the evaluations conclude. This information is in conflict with the information provided by the evaluations submitted by the petitioner. The petitioner submitted no evidence in response to the NOID to resolve this discrepancy despite being notified of its duty to resolve inconsistencies in the NOID. “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>9</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.

The Form ETA 750 does not provide that the minimum academic requirements of a bachelor's degree might be met through a degree less than four years in duration or some other defined equivalency explicitly stated on the Form ETA 750. The copies of the notices of Internet and newspaper advertisements and recruitment also fail to advise DOL or any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. The beneficiary does not qualify as a professional since he does not have a four-year bachelor's degree as required by the labor certification. The beneficiary also does not qualify as a skilled worker as he does not meet the terms of the labor certification as explicitly expressed or as extrapolated from the evidence of its intent about those requirements during the labor certification process, which requires a bachelor's degree and does not define any equivalency.

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and fails to meet the requirements of the labor certification, and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.