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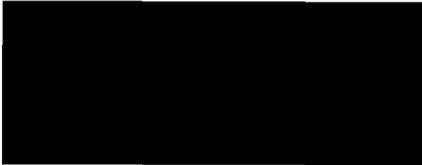
U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Office of Administrative Appeals MS 2090  
Washington, DC 20529-2090



U.S. Citizenship  
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date:

NOV 29 2010

IN RE:

Petitioner:  
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion. The fee for a Form I-290B is currently \$585, but will increase to \$630 on November 23, 2010. Any appeal or motion filed on or after November 23, 2010 must be filed with the \$630 fee. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Khew  
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 software development and consulting company. It seeks to employ the beneficiary permanently in the United States as an IT Manager. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (the DOL), accompanied the petition.<sup>1</sup> 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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).<sup>2</sup> The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.

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. 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.

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). The priority date of the petition is June 19, 2007, which is the date

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<sup>1</sup> On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

<sup>2</sup> The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).<sup>3</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on December 10, 2007.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, provide:

***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

On the ETA Form 9089, the "job offer" position description for an IT Manager provides:

Plan, direct or coordinate activities in such fields as electronic data processing, information system, systems analysis and computer programming. Consult with users, managements, vendors and technician to access computing needs and system requirements.

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

H.4. Education: Minimum level required: Bachelor's.

4-B. Major Field Study: Business Administration.

7. Is there an alternate field of study that is acceptable.

The petitioner checked "yes" to this question.

7-A. If Yes, specify the major field of study:

Computer Science.

8. Is there an alternate combination of education and experience that is acceptable?

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<sup>3</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.

The petitioner checked "yes" to this question.

8-A. If yes, specify the alternate level of education required:

Master's

8-C. The petitioner indicated that 24<sup>4</sup> years of work experience was acceptable for alternate level of master's degree.

9. Is a foreign educational equivalent acceptable?

The petitioner listed "yes" that a foreign educational equivalent would be accepted.

10. Is experience in an alternate occupation acceptable?

The petitioner indicated that 60 months of work experience was required in the alternate occupation.

10-B Identify the job title of the acceptable alternate occupation.

The petitioner indicated "any related occupation."

14. Specific skills or other requirements:

Oracle Forms, PL/SQL, Pro\*C/C, C.C++, UNIX shell scripts, Java, EJB, XML, JSP, SAP FI/CO, SAP R/3, ASP, MATCAB, Winrunner, Loadrunner, Silksuite, QTP, Rational Rose, PeopleSoft Financials/SCM, CRM, Applications Designer, Application Engine, People Code, File Layout [sic], SQR, PS/Query, nVision, Crystal Reports.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. 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

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<sup>4</sup> In the instant matter, the petitioner appears to have indicated an alternative educational level of a master's degree and twenty four years of work experience. The AAO notes that 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).

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 set forth above, the proffered position requires four years of college culminating in a Bachelor's degree in business administration or computer science, or a master's degree with twenty-four years of work experience. The petitioner also required five years of work experience in an alternate occupation identified as "any related occupation."

On the ETA Form 9089, signed by the beneficiary, the beneficiary represented that the highest level of achieved education related to the requested occupation was a bachelor's degree in business administration in 1999. He listed the institution of study where that education was obtained as University of Madras, Chennai, India and the year completed as 1999. The Form ETA 9089 also reflects the beneficiary's experience as follows:

Employer	Dates of Employment	Job Title
[REDACTED]	December 1, 2005 to November 23, 2007 the date he signed the Form ETA 9089.	Programmer Analyst
[REDACTED]	October 1, 2003 to November 1, 2005	Sr. Programmer/Module Lea(incomplete word)
[REDACTED]	July 1, 2002 to September 1, 2003	Sr. Programmer Analyst
[REDACTED]	October 1, 2002 to June 1, 2002	Programmer
[REDACTED]	June 1, 1999 to September 2000	Technical Officer
[REDACTED]	April 1, 1997 to April 1, 1999	Faculty

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma and transcripts from the University of Madras. It indicates that the beneficiary was awarded a Bachelor of business administration in 1999. The beneficiary's transcripts indicate this was a three-year university level program. The petitioner also provided the beneficiary's award of Title of GNIIT in Systems Management dated April 2002 and transcripts for studies and professional practice from NIIT. The petitioner also submitted a Diploma in Management from the Indira Gandhi National Open University (IGNOU) in India, awarded to the beneficiary in June 2002. The petitioner submitted a copy of a document with a dated December 2003, but provided no explanation of the relevance of this document to the beneficiary's academic credentials.

The petitioner additionally submitted a credentials evaluation, dated July 2005, from [REDACTED] written by [REDACTED] the evaluation describes the beneficiary's diploma from the University of

Madras and the GNIIT Diploma in Management Systems as the required components of a Bachelor of Business administration degree in management information systems from an accredited U.S. institution of higher education. [REDACTED] notes that NIIT is an accredited institution under the overall supervision of the Department of Electronics Accreditation of Computer Courses (DOEACC Society), and that the NIIT program has been approved by the All India Council of Technical Education (AICTE.).

The director denied the petition on July 16, 2009. He determined that the beneficiary's business administration degree could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in business administration because it was only three years in length. He further determined that the combination of the beneficiary's three year degree and his NIIT/GNIIT diploma were not the equivalent of a U.S. baccalaureate degree. The director referred to the AACRAO's electronic database EDGE for his conclusions, noting that NIIT is not viewed by EDGE as a degree-granting institution. The director noted that the petitioner had not provided any supporting documentation with regard to the beneficiary's studies at Indira Gandhi Open University, and thus, had not considered these studies in his examination of the beneficiary's academic credentials.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel submitted a letter from [REDACTED] dated September 4, 2009, that states the beneficiary completed eleven courses at IGNOU and that these studies are the equivalent of the completion of one year of academic study towards a baccalaureate degree from a U.S. accredited institution. [REDACTED] also states that since the beneficiary has only a three year bachelor's degree from the University of Madras, the one year IGNOU Diploma in Management can be considered equivalent to completion of the fourth year of his bachelor' degree studies.

Counsel also submits an Evaluation of International Educational Credentials dated August 7, 2009, from the American Association of Collegiate Registrars and Admissions Officers (AACRAO) Office of International Educational Services. This document lists the coursework undertaken by the beneficiary at IGNOU. AACRAO describes the Diploma in Management program as a one year program and lists eleven courses taken by the beneficiary. AACRAO states that the beneficiary completed a three year bachelor of business administration at the University of Madras and that this is comparable to three years of undergraduate credit from a regionally accredited U.S. college or university. AACROA notes that the beneficiary's Diploma in Management through IGNOU was a one year program and that in combination with the beneficiary's bachelor's degree is comparable to completion of a bachelor's degree in business administration. AACRAO also notes that the beneficiary's additional study at NIIT is vocational/technical in nature and is not appropriate for university transfer credit.

The occupational classification of the offered position is not one of the occupations statutorily defined as a profession at section 101(a)(32) of the Act, which states: "The term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Part F of the ETA 9089 indicates that the DOL assigned the occupational code of 11-3021.00 and title, IT Manager, to the proffered position. The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the applicable occupational classification code is noted on the labor certification form. O\*NET is the current occupational classification system used by the DOL. Located online at <http://online.onetcenter.org>, O\*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O\*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States.<sup>5</sup>

In the instant case, the DOL categorized the offered position under the SOC code 11-3021, Computer and Information Systems Managers. The O\*NET online database states that this occupation falls within Job Zone Four.

According to the DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. The DOL assigns a standard vocational preparation (SVP) of 7 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/\\*](http://online.onetcenter.org/link/summary/*) (accessed October 13, 2010). Additionally, the 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 the 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(1)(3)(ii)(C) states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must

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<sup>5</sup>See <http://www.bls.gov/soc/socguide.htm>.

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)(1)(3)(ii)(B) states the following:

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

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 9089 in this matter is certified by the DOL. Thus, at the outset, it is useful to discuss the DOL's role in this process. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position

and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by Federal Circuit Courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).<sup>6</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.

*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 the 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

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<sup>6</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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 the DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of United States 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 (now USCIS or 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.

The petitioner in this matter relies on the beneficiary's combined education to reach the "equivalent" of a degree, which is not a bachelor's degree based on a single degree in the required field listed on the certified labor certification.

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

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

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 United States Citizenship and Immigration Services (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." 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, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the Form ETA 9089, stipulating that a master's degree with twenty four years of work experience might be an acceptable alternative education level to the requisite bachelor's degree in business administration or computer science. Thus the petitioner appears to seek a minimum of a four year's bachelor's degree with a master's degree with extensive work experience as an acceptable alternative. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at \*7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this matter, the Form ETA 9089 does not specify an equivalency that is less than a four year bachelor's degree.

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

issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Further, the employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 14 n. 7. Thus, USCIS agrees that the best evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence is needed to ensure inflation of those requirements is not occurring in an effort to fit the beneficiary's credentials into requirements that do not seem on their face to include what the beneficiary has.

On August 2, 2010, the AAO issued a request for evidence to the petitioner. In this request, the AAO noted that that the petitioner did not specify on the ETA Form 9089 that the minimum academic requirements of four years of college and a bachelor's of business administration or computer science, or a master's degree with 24 years of work experience might be met through a combination of lesser degrees, such as a three year Indian degree and a post graduate diploma. The AAO stated that a bachelor's degree in business administration is equivalent to three years of undergraduate study in the United States and that the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually less than a single-source U.S. bachelor's degree or its foreign equivalent. when the labor market test was conducted. The AAO also stated that the record did not establish that the beneficiary's Diploma in Management from IGNOU was the equivalent of a postgraduate diploma described by EDGE in its commentary on three year bachelors' degree followed by a one year Post Graduate Diploma. The AAO requested further evidence with regard to IGNOU accreditation status and its relationship with AICTE, and to academic credentials required to enter the IGNOU program.

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. Again, 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).

In response to the request for evidence, counsel submits extensive documentation on IGNOU, including its Student Handbook and Prospectus. Included in the evidence is the following:

A copy of the Act of Parliament dated 1985 that created IGNOU in 1985 with the purpose of advancing and disseminating learning and knowledge by a diversity of means, including the use of any communication technology, to provide opportunities

for high education to a larger segment of the population, and to encourage the Open University and distance education systems in the educational pattern of the country, in relevant part;

A letter from the [REDACTED] dated May 13, 2005 that states the [REDACTED] and Master of Computer Applications (MCA) degree award by [REDACTED] are recognized by [REDACTED]

An undated letter from [REDACTED] India. The letter writer's letter is titled "Sub: Regarding Admission of [REDACTED] in [REDACTED]. the letter writer states that the eligibility criteria for a diploma, PG Diploma or MBA was Three years of bachelor degree or any four year professional degree; three years of supervisory work experience, which is not required if you have a professional degree, and qualification in the Open Management Aptitude Test conducted by [REDACTED]. The letter writer also states that [REDACTED] degree/diploma/certificates are recognized by all the member institution of the Association of Indian University (AIU) and are at part with degrees, diploma/certificate of all Indian University/deemed University/Institutions.

A letter dated December 12, 1986 written by the Deputy Secretary of Association of Indian Universities (AIU). The letter states that [REDACTED] New Delhi, has been admitted to the membership of AIU for a period of three years;

A letter from the University Grants Commission, new Delhi, dated February 1992 that states the certificates, diploma and degrees awarded by [REDACTED] "are to be treated equivalent to the corresponding awards of the university in the country;" and

A letter dated August 16, 2009, signed by the [REDACTED] Government Autonomous College, Rourkela, Orissa. This document states that the eleven courses listed in the letter are taught in management programs of [REDACTED]. The course codes listed correspond to the courses listed on the document previously submitted to the record as "Course Completion Status," "OIGS," "Programme: MP," and addressed to the beneficiary in Chennai, India.

Counsel states that this last document has been previously submitted to the record. The AAO notes that the document entitled "Course Completion Status" was submitted with the initial I-140 petition, but was never identified as to its contents, or to which academic program it refers. Counsel resubmits the AACRAO educational evaluation, stating that the document had been previously submitted to the record.

The AAO notes that the Student Handbook on page eleven indicates that the [REDACTED] Diploma in Management (DIM) is comprised of five courses (three compulsory and two elective courses) These courses are identified as Management Functions and Behavior, Management of Human Resources,

Economic and social environment, with electives of Accounting and Finance for Managers, management of machines and materials, marketing for managers, and information systems for managers. On the same page, the [REDACTED] Post Graduate Diploma in Management (PGDIM) is described as a program comprising eleven courses. The list of courses is identical to the list of courses outlined on the AACRAO document and the number of courses (eleven) is the same as those ostensibly completed by the beneficiary. However, the record indicates that the beneficiary received a Diploma in Management, rather than a Post Graduate Diploma in Management (PGDIM.)

On page 21 of the [REDACTED] Handbook, the names and eligibility of [REDACTED] programs are listed. With regard to the Post Graduate Diploma in Management or Master of Business administration programs, the eligibility requirements are the same as listed in [REDACTED] letter. With regard to the [REDACTED] the [REDACTED] states that the eligibility is the same, namely bachelor degree and three years supervisory/managerial/professional experience or professional degree/or qualification in accountancy, or a master's degree in any subject. However, the [REDACTED] also notes that eligibility for the DIM program can be non-graduate (10+2 or its equivalent) with six years' supervisory/ management experience as of the last date for receiving the application for admission to the management program. Thus, entrance into the DIM program is not exclusively based on a three-year bachelor's degree. This information undermines the petitioner's assertion that the beneficiary's studies at [REDACTED] are the equivalent of a post graduate diploma in management. Eligibility can be for candidates with only secondary degrees but with lengthier work experience.

The AAO notes that the record is confusing with regard to whether the beneficiary has an [REDACTED] Post Graduate Diploma in Management (PGDIM) or a Diploma in Management (DIM). Based on the evidence in the record, it appears that he undertook a one year course of studies and received a Diploma in Management, rather than the Post Graduate Diploma in Management. The record also is not clear with regard to the claimed coursework for the Diploma in Management, which does not correspond to the [REDACTED] description which indicates a much shorter course of studies.

Moreover, as advised in the request for evidence 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>7</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

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<sup>7</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.

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/guide to creating international publications.pdf](http://www.aacrao.org/publications/guide%20to%20creating%20international%20publications.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’s credential advice provides that a (3 year) Bachelor’s degree is comparable to “3 years of university study in the United States. Credit may be awarded on a course-by-course basis.”

EDGE discusses both Post Secondary Diplomas, for which the entrance requirement is completion of 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 asserts 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 discussed above, the record does not clearly establish that the beneficiary has a Post Graduate Diploma, rather than a Diploma in Management, which based on [REDACTED] does not have the entrance requirements of the [REDACTED] Post Graduate Degrees. The AAO also noted that the [REDACTED] letter submitted to the record indicates that the [REDACTED] Master of Business Administration (MBA) and Master of Computer Applications (MCA) degrees are recognized by [REDACTED]. This letter says nothing with regard to AICTE recognition of the [REDACTED] Diploma in Management obtained by the beneficiary. The AAO acknowledges that the [REDACTED] program is a part of the Indian government and its degrees and certificates are accepted in other Indian universities. However, this point is not dispositive as to whether the beneficiary’s one year Diploma in Management in conjunction with a three year bachelor’s degree in Business Administration should be considered the equivalent of a U.S. baccalaureate degree in business administration for visa preference classification purposes.

In the instant case, the record does not contain any evidence showing the beneficiary holds a four-year US bachelor’s degree in one of the required fields, nor does the record contain any evidence

showing that the beneficiary's diploma in management from [REDACTED] is a postgraduate diploma issued by an accredited university or institution approved by [REDACTED] and its entrance requirement is the three-year bachelor's degree.

In its RFE, the AAO requested a complete copy of the petitioner's recruitment efforts, including the notice of the filing, job order, advertisements in newspapers or professional journals and additional recruitment efforts for a professional job, and the recruitment report to establish that the petitioner intended to delineate an equivalency to the bachelor degree requirement as set forth in Part H, items 1-13 of the ETA Form 9089 to a combination of a three year degree and diplomas as the actual educational minimum requirement in the instant labor certification application during the labor market test.

The petitioner did not submit its recruitment report to the AAO, stating that it strongly believes it has adequate documentation to show that the beneficiary has a bachelor's degree in business administration, and would focus on this issue rather than prove the intent of the petitioner based on its advertisements and recruitment report. Counsel added that it was extremely difficult to prove, through its advertisements that the petitioner intended to accept a combination of degrees, in lieu of a bachelor's degree. Counsel states that advertisements for PERM applications are usually generic to reduce the cost of the advertisement and to invite as many applicants as possible for the job. Counsel added that the advertisements did not mention any degree requirements and the recruitment report did not address the issues of combination of degrees as all the applicants who responded had bachelor's degrees.

The ETA Form 9089 does not provide that the minimum academic requirements of four years of college and a Bachelor of Business Administration degree might be met through three years of college or some other formula other than that explicitly stated on the ETA Form 9089. The petitioner did not submit copies of the notice(s) of Internet and newspaper advertisements, and further states that there were no degree requirements in the advertisements.<sup>8</sup> Thus, the petitioner may have failed to advise 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 have a United States baccalaureate degree or a foreign equivalent degree, and, thus, does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act. Further, the alien 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.

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.

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<sup>8</sup> The AAO notes that the assertions of the petitioner, and by extension, of counsel, do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

**ORDER:** The appeal is dismissed.