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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:

Office: NEBRASKA SERVICE CENTER

Date:

OCT 05 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, with a fee of \$630. 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 Rhew
Chief, Administrative Appeals Office

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

The petitioner claims to be a software development business. It seeks to permanently employ the beneficiary in the United States as a systems analyst. On November 2, 2006, the petitioner requested classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).¹

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition is August 18, 2003, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).

At issue in this case is whether the beneficiary possesses the education required by the terms of the labor certification.

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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d at 145. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

The petitioner must establish that the beneficiary qualifies for the offered position. In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (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, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Iwine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1st

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

² The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). 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).

Cir. 1981). To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

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

- Education: "4" years of college leading to a "BS" in computer science or engineering.
- Experience: Two years of experience in the job offered.

The labor certification does not state that an equivalent combination of education and/or experience would be acceptable.

The record contains a copy of the following diplomas and transcripts for the beneficiary's studies at the University of Rajasthan, India:

- Two-year Master of Science degree in Physics.
- Three-year Bachelor of Science degree in Physics, Chemistry and Mathematics.
- Two-year foreign language diploma in French.
- Two certificate courses in computer applications (final exams held on January 1990 and May 1986). It is noted that this education is not listed on the labor certification.

The record also contains transcripts for two 26-week sessions from the National Institute of Information Technology (NIIT) in network-centered computing and software technology & systems management, dated January 1997 and April 1998.

The record contains two evaluations of the beneficiary's credentials:

- Evaluation of [REDACTED], dated May 5, 2003. The evaluation states that the beneficiary's two-year Master of Science degree is equivalent to a U.S. master's degree in physics. The evaluation states that the two University of Rajasthan certificate courses equate to one semester of study in computer science from an accredited U.S. university, and the two semesters of study at NIIT represent the completion of two semesters of study in computer science from an accredited technical college in the United States. The evaluation states that NIIT is accredited by the All India Council for Technical Education (AICTE). However, according to AICTE's list of accredited institutions, this is not the case.³ According to its website, NIIT is a "Global Talent Development Corporation, building a skilled manpower pool for global industry requirements."⁴ NIIT is a publicly-

³ <http://www.aicte-india.org/accreditation.htm> (accessed September 28, 2010).

⁴ <http://niit.com/aboutniit/Pages/Overview.aspx> (accessed September 28, 2010).

traded corporation that provides technical instruction.⁵ It is not an accredited college or university. It is not deemed to be a university by the University Grants Commission.⁶ The evaluation concludes that the three semesters of computer science study, combined with the beneficiary's degrees from the University of Rajasthan, are equivalent to a Bachelor of Science degree in computer science from an accredited U.S. college or university.

- Evaluation of [REDACTED] dated March 12, 2008. [REDACTED] claims to be a "Professor of Computer Information Systems" at Medgar Evers College of the City University of New York. However, the college's online directory states that he is only a lecturer, not a professor. See <https://webapp.mec.cuny.edu/phone/telephone.jsp> (accessed September 2, 2010). The evaluation states that the beneficiary's three-year bachelor's degree is equivalent to three years of study towards a U.S. bachelor's degree, and that the beneficiary's two-year master's degree is equivalent to a U.S. bachelor's degree in physics plus one year of additional post-secondary study. This conclusion conflicts with that of the [REDACTED] evaluation. The evaluation states that the beneficiary's two certificate courses in computer applications from University of Rajasthan are equivalent to eight credits in computer science. This conclusion also conflicts with the [REDACTED] evaluation. The evaluation also states that the beneficiary's studies at NIIT are equivalent to 48 academic credits and "fulfilled the requirements for major concentration in Computer Science." This also conflicts with the conclusions of the [REDACTED] evaluation. Further, it does not seem plausible that the beneficiary could be deemed to have completed 48 academic credits in computer science after two 26-week sessions at NIIT. The evaluation states that NIIT "provides post-secondary academic programs that are recognized by educational authorities and the Government of India," and the American Council on Education (ACE). However, the evaluation provides no evidence or citation in support of its claim that the NIIT location that the beneficiary attended is a member of ACE. A review of the ACE website also failed to provide support for the evaluator's claim.⁷ The evaluation states that while NIIT "is a private institution, the classes offered [are] comparable to classes offered by universities in the United States. The evaluation concludes that the beneficiary's studies at NIIT are, by itself, equivalent to a U.S. bachelor's degree in computer science. It is not clear how two 26-week sessions at a private company can be equivalent to a U.S. bachelor of science degree. Further, it strains credulity to assert that the completion of two 26-week sessions from a publicly traded company without the issuance of a post-secondary degree or diploma could be, by itself, equivalent to a U.S. bachelor's degree.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive

⁵ <http://niit.com/investorrelations/Pages/InvestorRelations.aspx> (accessed September 28, 2010).

⁶ <http://www.ugc.ac.in/inside/deemeduniv.html> (accessed September 28, 2010).

⁷ <http://www.acenet.edu/AM/Template.cfm?Section=Home> (accessed September 28, 2010).

evidence of eligibility; USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The submitted evaluations conflict with each other on multiple material issues. The evaluations do not evaluate the individual courses completed by the beneficiary. The evaluations do not provide credit equivalents for courses completed by the beneficiary. Given the inconsistencies between the statements in the evaluations and the evidence in the record, the AAO reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁸ AACRAO, according to its website, 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 its registration page, EDGE is "a web-based resource for the evaluation of foreign educational credentials."⁹

EDGE provides a great deal of information about the educational system in India. According to EDGE, a three-year Bachelor of Science degree from India "represents attainment of a level of education comparable to two to three years of university study in the United States."¹⁰ EDGE also states that a Master of Science degree represents attainment of a level of education comparable to a bachelor's degree in the United States.¹¹

Therefore, according to EDGE, the beneficiary possesses the equivalent of a U.S. bachelor's degree in physics. The labor certification, however, requires an individual with a Bachelor of Science in computer science or engineering. Nowhere on the labor certification does it state that the educational requirements of the position could be met by a combination of lesser education that is equivalent to such a degree. Further, as discussed above, the submitted evaluations contain contradictions and inaccuracies that significantly undermine the credibility of their conclusions.

Accordingly, on March 8, 2010, the AAO issued a Request for Evidence (RFE), instructing the

⁸ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision.

⁹ <http://aacraoedge.aacrao.org/register/index/php>.

¹⁰ <http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=128> (accessed February 9, 2010).

¹¹ <http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=140> (accessed February 9, 2010).

petitioner to submit evidence that the beneficiary possessed the required education for the offered position. The AAO also noted that the petitioner has filed petitions on behalf of multiple beneficiaries. The RFE informed the petitioner that, when a petitioner has filed petitions on behalf of multiple beneficiaries which have been pending simultaneously, the petitioner must establish that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wage to each beneficiary as of the priority date of each petition and continuing until each beneficiary obtains lawful permanent residence. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). The record in the instant case contains no information about the priority dates and proffered wages for the beneficiaries of the other petitions, whether the beneficiaries have withdrawn from the petition process, or whether the petitioner has withdrawn its job offers to the beneficiaries. There is also no information in the record about whether the petitioner has employed the beneficiaries or the wages paid to the beneficiaries, if any. Thus, the RFE informed the petitioner that it had not established its ability to pay the proffered wage for the beneficiary or the proffered wages to the beneficiaries of the other petitions, and instructed the petitioner to provide the following information for each beneficiary of a petition filed by the petitioner from 2003 to the present:

- Full name
- Petition receipt number.
- Exact dates employed by the petitioner.
- Whether the petition is inactive, meaning that (a) the petition has been withdrawn, (b) the petition has been denied but is not on appeal, or (c) the beneficiary has obtained lawful permanent residence.
- The priority date of each petition.
- The proffered wage listed on the labor certification submitted with each petition.
- The salary paid to the beneficiary, if any, from 2003 to the present.
- Forms W-2 for each year of employment starting in 2003.

The RFE also requested that the petitioner provide its federal income tax returns for 2006, 2007 and 2008, any Forms W-2, Wage and Tax Statement, issued by the petitioner to the beneficiary during this period, and the petitioner's most recent Form 941, Employer's Quarterly Federal Tax Return.

The petitioner filed a response to the RFE on April 22, 2010. The response contains:

- A statement from counsel that evaluator [REDACTED] had reiterated his statement in his evaluation that the beneficiary's studies at NIIT make him "eligible for admission to a master's program in Computer Science at Medgar Evers College of the City University of New York because these credentials are deemed to be the foreign equivalent of a four-year bachelor's degree in Computer Science."
- The petitioner's federal income tax returns for 2006, 2007, and 2008.
- Forms W-3 for 2004, 2005, 2006, 2007, and 2008.
- Forms W-2 issued by the petitioner to its employees for 2009.
- Form 941 for the first quarter of 2010.

Section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

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 left to USCIS to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).¹² *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:

¹² Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

[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 (9th 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 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 (9th Cir. 1984).

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

The first issue is whether the offered position can be classified as a skilled worker and/or professional. 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 application form. O*NET is the current occupational classification system used by the DOL. O*NET, located online at <http://online.onetcenter.org>, 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.

In the instant case, the DOL categorized the offered position under the SOC code 15-1051.00, Computer Systems Analysts.¹³ The job offered 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."

The occupation of Computer Systems Analysts falls within Job Zone Four. See <http://online.onetcenter.org/link/summary/15-1051.00#JobZone> (accessed July 29, 2010). According to O*NET, most Job Zone Four "occupations require a four-year bachelor's degree, but some do not." See <http://online.onetcenter.org/help/online/zones#zone4> (accessed July 29, 2010). O*NET further states:

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.

Id. Therefore, 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. Accordingly, AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional 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

¹³ See <http://www.bls.gov/soc/socguide.htm>. Prior to O*NET, the DOL used the Dictionary of Occupational Titles (DOT) occupational classification system. The O*NET website contains a crosswalk that translates DOT codes into SOC codes. See <http://online.onetcenter.org/crosswalk/DOT>. Here, the DOL assigned the offered position the DOT code 030.167-014. Using the O*NET crosswalk, this translates to SOC code 15-1051.00, Computer Systems Analysts.

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. 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 (5th 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) of the Act (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.

As is explained above, EDGE states that the three-year Bachelor of Science degree from India is equivalent to three years of study towards a U.S. bachelor's degree, and the two-year Master of Science degree is equivalent to a U.S. bachelor's degree. However, the beneficiary's field of study is physics, which is different from the required fields of computer science or engineering. For

classification as a professional, the beneficiary's bachelor's degree must be in a field of study that is related to the profession. *See* 8 C.F.R. 204.5(l)(3)(ii)(C).

Accordingly, the petitioner relies on a combination of the beneficiary's Master of Science in Physics, two certificate courses in computer applications from University of Rajasthan, and two 26-week sessions at NIIT for the equivalent of a U.S. bachelor's degree in computer science. The petitioner therefore relies on the beneficiary's combined education to reach the "equivalent" of a degree, which is not a bachelor's degree from a college or university 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.

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 as a professional under section 203(b)(3)(A)(ii) of the Act.

Therefore, at issue is whether the beneficiary can be classified as a skilled worker pursuant to Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), which grants preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

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 petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1). (12). *See Matter of Wing's Tea House*, 16 I&N Dec. at 159; *see also Matter of Katighak*, 14 I&N Dec. at 49. 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. at 406. *See also, Mandany v. Smith*, 696 F.2d 1008; *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1st Cir. 1981).

As is stated above, the labor certification requires a Bachelor of Science degree in computer science or engineering. The labor certification does not permit a combination of lesser education. There is no evidence in the record that the petitioner expressed its intent to the DOL during the labor certification process that it would accept lesser education. Statements prepared and submitted after the denial of a petition lack sufficient credibility to outweigh the plain meaning 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.

The recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), 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." However, in this case, the labor certification does not state that the petitioner would accept a Bachelor of Science "or equivalent." Further, 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). Further, the instant case does not involve the definition of the term "B.A. or equivalent." The labor certification does not contain the "or equivalent" language.

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the labor certification 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.

In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the labor certification and does not include alternatives to a four-year bachelor's degree in computer science or engineering. 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).

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.

The beneficiary does not have a United States baccalaureate degree in computer science or engineering and, thus, does not qualify for professional preference visa classification under section 203(b)(3)(A)(ii) of the Act. Even considering the beneficiary for classification as a skilled worker, the beneficiary does not meet the terms of the labor certification, and the petition is denied on that basis as well. See 8 C.F.R. § 204.5(l)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification).

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.