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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**

B6

[REDACTED]

FILE:

[REDACTED]

Office: NEBRASKA SERVICE CENTER

Date:

OCT 14 2010

IN RE:

Petitioner:

Beneficiary:

[REDACTED]

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

ON BEHALF OF PETITIONER:

[REDACTED]

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 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 consolidator of major national and international airlines. It seeks to employ the beneficiary permanently in the United States as an accountant/system consultant. As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification approved by the Department of Labor (the 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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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.²

On appeal and in response to the AAO's RFE that will be discussed in greater length in these proceedings, counsel maintains that the instant petition should be considered as filed under the skilled worker classification, and that the beneficiary is qualified to perform the duties of the proffered position which requires a bachelor's degree in business administration, accounting or management and two years of work experience because he possesses the equivalent of a U.S. baccalaureate degree. The AAO will examine both these assertions in these proceedings.

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). The priority date of the petition is March 11, 2005, which is the date

¹ After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004).

² The submission of additional evidence on appeal is allowed by the instructions to the 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).³ The Immigrant Petition for Alien Worker (Form I-140) was filed on October 20, 2006.

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

Analyze, implement and install accounting softwares. Examine, analyze and interpret accounting records, expense, disbursements and bank records. Prepare programming specification for accounting using Trams, Fact, Peachtree, Trend Microsoft Excel, Word and general databases with reservation CRS systems.

The minimum education, training, experience and skills required to perform the duties of the offered position are set forth at Part A of the labor certification and reflects the following requirements:

Block 14:

Education (number of years)

| | |
|-------------------------|--|
| Grade school | (blank) |
| High school | (blank) |
| College | (blank) |
| College Degree Required | Bachelor's degree |
| Major Field of Study | Business, Administration, Accounting, Management |

Experience:

| | |
|--------------------|---------|
| Job Offered | 2 |
| (or) | |
| Related Occupation | (blank) |

Block 15:

Other Special Requirements N/A

As set forth above, the proffered position requires four years of college culminating in a Bachelor's degree in business, administration, accounting or management, and two years of experience in the job offered. The AAO notes that when the petitioner leaves the block on the ETA Form 750 for

³ 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.

██████████ Educational Administration, ██████████ This document indicates that the program is recognized by the ██████████ governments and that the beneficiary's studies were under the control and management of ██████████ and that his study program is described as the ██████████

██████████ This document indicates that the beneficiary finished his Post Graduate Studies in Second Division. The record also contains two Result-cum-Detailed Marks Card/Certificates for the beneficiary's two semesters of studies and subsequent examinations in December 1991 and June 1992.

The record also contains a copy of an undated credentials evaluation from International Credentials Evaluation and Translation Services (ICETS) written by ██████████ The evaluation describes the beneficiary's three years of study at the ██████████ and his one year of studies for the ██████████ as the equivalent of a U.S. bachelor of Business Administration degree in accounting and management from a U.S. accredited college or university.

In response to the director's RFE dated October 2, 2007, the petitioner submitted an additional academic evaluation dated November 8, 2007 written by ██████████ and Educational Services. ██████████ states that the beneficiary's studies at the ██████████ were equivalent to three years of academic studies and describes them as 90 credits (including 30 credits in accounting) towards a U.S. bachelor's degree in Business Administration with a major in accounting. ██████████ then states that after the beneficiary finished his studies at ██████████ he obtained his ██████████ ██████████ as the largest non-governmental educational organization in India managing a chain of 667 institutions, and that it has established a reputation for academic excellence.

██████████ the nature and duration of academic coursework, it was his professional opinion that the beneficiary's Post Graduate Diploma was the equivalent of 30 credits of academic studies towards a U.S. bachelor's degree in Business administration from an accredited U.S. college or university. ██████████ then states that based on the beneficiary's bachelor's degree from the ██████████ and his Post Graduate Diploma, the beneficiary has the equivalent of a U.S. bachelor's degree in business administration (accounting major).

The director denied the petition on April 21, 2008. The director determined that the beneficiary's three-year bachelor of commerce degree could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree because it was not a single four-year degree. The director also noted that a combination of lesser degrees is also not the equivalency of a four year U.S. baccalaureate degree.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel asserts that the director erred by presuming that the petition was filed for a professional classification under the EB2 visa preference classification, and that the director also erred by not considering the instant petition

under the INA § 203(b)(3)(A)(i) skilled worker classification. Counsel notes that the petitioner's cover letter submitted with the I-140 petition states that the petitioner wishes to classify the beneficiary pursuant to 8 C.F.R. 203(B)(3)(A)(i), or as a skilled worker. Counsel cites *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), for the proposition that visa petitions may attempt classification under both the professional and skilled worker categories. Counsel also cites an unpublished AAO decision for the proposition that if an applicant is determined ineligible for classification as a professional, eligibility for classification as a skilled worker must also be considered. Counsel also notes that based on his documented ten years of work experience alone, the beneficiary meets the requirements of the skilled worker classification.

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 A of the ETA 750 indicates that the DOL assigned the occupational code of 13-2011 and title, accountants and auditors, 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.⁶

In the instant case, the DOL categorized the offered position under the SOC code 13-2011. This position is not described in full in the O*Net with regard to job zones; however, with regard to a related SOC classification of 13-2011.01, accountants contained in the O*Net 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/> (accessed <http://online.onetcenter.org/link/summary/13-2011.01> on September 28, 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

⁶ See <http://www.bls.gov/soc/socguide.htm>.

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.

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(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 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).⁸ *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).

⁸ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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 (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 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 (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) (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. 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). 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 U.S. 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 750 and does not include alternatives to a four-year bachelor's degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien 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 750 does not specify an equivalency to the requirement of a bachelor’s degree and two years of work experience.

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.

Thus, the AAO issued a request for evidence (RFE) on soliciting such evidence. In response, the petitioner submitted the following evidence:

The petitioner’s recruitment report to DOL that states it received three resumes in response to its recruitment efforts and that all three individuals did not have sufficient experience or skills for the proffered positions.⁹

The petitioner’s advertisements for the proffered position in *The Chicago Tribune* dated November 20, 2004, December 18, 2004 and February 5, 2005. All three advertisements require a bachelor’s degree in business administration and two years of work experience;

⁹ The petitioner did not provide any of the resumes received as a result of its recruitment efforts. Therefore, it is not possible to determine the actual credentials of any candidates, and whether any had relevant baccalaureate degrees and two years of work experience.

The petitioner's online job offer on America's Job Bank dated April 14, 2005. The job description states "accounting consultant w/Bachelor degree in Business Administration & 2 yr. exp;"

The petitioner's advertisement on an online website DICE.com, dated February 1, 2005. This advertisement states the educational requirements as "bachelor degree in business administration and two years experience;"

The petitioner's posting notice with dates posted indicated as October 4, 2004 to October 25, 2004. The educational requirements on this document are stated as "Bachelor's Degree in Business Management with 2 years experience in the job offered;"¹⁰

An article entitled "Evaluating International Credentials: A Primer for Graduate Admissions Professionals" written by [REDACTED] for the AACRAO Annual Meeting in 2005;

An article written by [REDACTED] "Doesn't Have the Right Degree", an American Immigration Lawyers Association (AILA) publication;

A copy of *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), and

An unpublished AAO decision that examined the equivalency of a three year degree followed by a Bachelor of Education degree to a U.S. bachelor's degree in education.

The AAO notes that the petitioner also submitted a copy of a second Statement of Marks from the [REDACTED] dated 1988 that indicates the beneficiary's second and third years of study were taken at P.G.D.A.V. College (Day).

In reviewing the evidence submitted in response to its RFE, the AAO finds that the petitioner consistently required a bachelor's degree in business administration or a related field and two years of prior work experience. There is no evidence submitted to the record that indicates the petitioner required less than a baccalaureate degree and the two years of work experience, or that any other combination of degrees or education and experience were acceptable alternatives to the terms indicated on the certified ETA Form 750.

¹⁰ The AAO notes that the petitioner's posting notice has a state of New York address for the Agency for Workforce Innovation and the DOL regional certifying officer, although the ETA Form 750 lists the petitioner's employment location in Chicago. Thus, a question is raised with regard to whether any employees in the petitioner's office in Chicago ever were notified of the job availability.

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 two evaluations of the beneficiary's education to show that the beneficiary met the educational requirements of the labor certification. Both the ICETS and the IndoUS evaluations state that the beneficiary's three-year Bachelor of Commerce degree and his two semesters of postgraduate studies are the equivalent of a U.S. bachelor's degree in business administration.

further identifies the beneficiary's credit hours received in both his post secondary studies at the and his post graduate diploma at the Communication and Educational Administration. The AAO notes that while the petitioner has submitted all of the beneficiary's Statements of Marks from the neither of these documents nor the beneficiary's partially copied diploma support any findings with regard to actual coursework undertaken by the beneficiary in his three-year Bachelor of Commerce diploma. Further, the transcripts from either academic institution attended by the beneficiary do not identify any correlation between marks received and credit hours obtained. also does not provide any further explanation for how he arrived at the claimed credit hours for either program or for his claim that the beneficiary attended a year and a half post graduate program. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The AAO would give only limited weight to the evaluations submitted to the record.

Moreover, as advised in the RFE 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).¹¹ 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

¹¹ 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.

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/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 provides a great deal of information about the educational system in India, and while it confirms that a bachelor of commerce degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate.

EDGE also 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.

In its RFE, the AAO noted that the petitioner has provided no evidence that the [redacted] Management was accredited by AICTE, or that a three or even two year baccalaureate is required for admission into this program. In response, counsel submitted Internet excerpts from EDGE; excerpts from Internet websites for the [redacted] founded in 1997 and the [redacted], founded in 1988 affiliated with [redacted] are both accredited by the AICTE; an Internet excerpt for the [redacted] Committee that lists career professionals, and celebrities, among others, who are alumni of [redacted] institutions; an Internet

excerpt that identifies the types of institutions found within the [REDACTED] society, including arts and science colleges, colleges of education, Vedic institutes and 520 public schools. The petitioner also submits an Internet excerpt that lists [REDACTED] programs of studies in all Indian states. This listing includes the [REDACTED]. The petitioner submits an Internet excerpt on AICTE.

With regard to these materials, counsel states that the a three year bachelor's degree in commerce is a prerequisite for a one year post graduate diploma or a two year master's degree, and thus, the beneficiary's post graduate degree is a foreign equivalent of the U.S. baccalaureate degree. He further notes that [REDACTED] is an accredited university and approved by AICTE. Counsel then appears to refer to an unpublished AAO decision that involved a beneficiary who possessed both a three year baccalaureate degree and a bachelor of education degree. Counsel refers to this decision to support his assertion that the beneficiary possesses the required educational qualifications and the required two years of work experience. The AAO notes that the materials submitted by counsel are poorly organized; and at times, the record is not clear as to whether all materials were submitted. For example, counsel refers to an evaluation report from Josef Silny & Associates, Inc. which is not found in the record. Counsel, with regard to other materials submitted to the record, makes no commentary as to their relevance to these proceedings.

Counsel refers to a decision issued by the AAO concerning an educational equivalency issue, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

The AAO acknowledges that the petitioner has provided evidence that some [REDACTED] are accredited by the AICTE; however, it has not established that all programs under the [REDACTED] are accredited by the AICTE. The AAO has reviewed the list of institutions with Post Graduate Degrees as of 2009 listed by AICTE on its website. While this list contains several [REDACTED], it does not

[REDACTED]
New Delhi. See <http://www.aicte-india.org/misappmanagement.htm#>, available as of September 29, 2010. As stated previously, the D.A.V. program also contains many colleges and high schools. The record does not reflect that the AICTE accredits all D.A.V. programs, or more specific to the instant petition, all the D.A.V. colleges, and institutes.

Further the petitioner also has not established that entry into the beneficiary's program at [REDACTED] required a two or three year postsecondary degree. Further, as discussed previously, the petitioner has not established that the beneficiary's three year program at the [REDACTED] was in the field of accounting or any other related field. If the petitioner pursues this matter any further, it should provide the beneficiary's complete diploma from the [REDACTED] to establish the specific field that he studied in his three-year bachelor of commerce program. Thus, the AAO does not find that the petitioner has established

that the beneficiary's three years study at the [REDACTED] from the [REDACTED] are the equivalent of a U.S. baccalaureate degree in business administration, accounting or management.

Further, the Form ETA 750 does not provide that the minimum academic requirements of a bachelor's degree in business, administration, management might be met through a three year bachelor's degree in combination with a Post Graduate Diploma in Management or some other formula other than that explicitly stated on the Form ETA 750. The copies of the petitioner's notice(s) of Internet and newspaper advertisements and recruitment, provided with the petitioner's response to the RFE issued by this office, also fail to advise the 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. Thus, 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 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.

In its RFE, the AAO also requested evidence that the petitioner could legally do business in the state of Illinois, noting that the petitioner remained in active status in New York. The petitioner submitted its Articles of Incorporation for the state of Illinois filed on July 1, 1984, a copy of another Article of Incorporation document dated May 8, 1998, and a license certificate for the petitioner dated February 3, 2009, with an expiration date of February 15, 2011. The petitioner has established its ability to operate in the state of Illinois.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. With regard to the beneficiary's qualifications, the petitioner has not met that burden.

ORDER: The appeal is dismissed.