

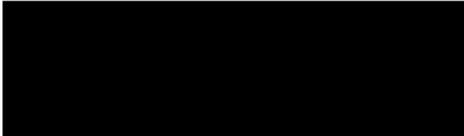
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



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DATE: DEC 01 2011 OFFICE: NEBRASKA SERVICE CENTER FILE: 

IN RE: Petitioner: 
 Beneficiary: 

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

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

The petitioner is a software development business. It seeks to employ the beneficiary permanently in the United States as a junior programmer and to classify him as a professional under section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.

Upon review of the petition, the Director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education specified 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. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

Section 203(b)(3)(A)(i) of the Act 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 this petition is September 30, 2003, which is the date the labor certification application was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).³ The Form ETA 750 was certified by the DOL on September 12, 2006, after which the Immigrant Petition for Alien Worker (Form I-140) was filed on March 9, 2007.

¹ After March 28, 2005, the correct form to apply for labor certification is the ETA Form 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 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, including materials submitted in response to a Request for Evidence and Notice of Derogatory Information issued by the AAO. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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.

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

Collect information to help Senior Programmers to analyze, formulate and define specifications and develop client server-based database applications including modification of existing applications. Specifically, collect information from business clients and other infrastructure groups to identify database issues. Chart the systems development life cycle on all size development and enhancement projects. Maintain documentation and guidelines.

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

Block 14:

Education (number of years)

Grade school	6
High school	6
College	4
College Degree Required	bachelor's
Major Field of Study	*

Experience (number of years)

Job Offered	1
(or)	
Related Occupation	0

Block 15:

Other Special Requirements	Business Administration, Computer Science, Computer Engineering or Electrical Engineering
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As set forth above, the proffered position requires four years of college culminating in a bachelor's degree in the area of business administration, computer science, computer engineering or electrical engineering, and one year of experience in the job offered. As such, it is categorized as a professional position under section 203(b)(3)(A)(ii) of the Act.

In Part B of the labor certification, signed by the beneficiary, the beneficiary's prior education is listed as a three-year Bachelor of Science degree at Panjab University in India (1992-1995) followed by a diploma and three certificates awarded by various Indian institutions upon completion of short-term study and training programs in the computer field (1995-1999). The Form ETA 750 also sets forth the

beneficiary's experience as follows: (1) Team Leader--Technical Services at [REDACTED] in New Delhi, India, from August 2000 to November 2000, (2) Programmer at [REDACTED] in Duluth, Georgia, from November 2000 to May 2001, (3) Junior Programmer at [REDACTED] in Stamford, Connecticut, from June 2001 to November 2002, (4) Junior Programmer at [REDACTED] in Stamford, Connecticut, from November 2002 to July 2003, and (5) Junior Programmer with the petitioner ([REDACTED] Torrance, California) from July 2007 to the present.

Beneficiary's Education

As evidence of the beneficiary's educational qualifications, the record contains a copy of the beneficiary's diploma from Panjab University. It indicates that the beneficiary was awarded a Bachelor of Science degree on July 22, 1995. The record also contains a copy of a credentials evaluation from Career Consulting International, dated May 6, 2008. The evaluation describes the beneficiary's Bachelor of Science Degree from Panjab University as equivalent to a bachelor's degree in computer science from an institution of postsecondary education in the United States.

The Director denied the petition on July 16, 2008. In his decision the Director determined that the beneficiary's bachelor's degree could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree because (a) it comprised only a three-year course of study, rather than a four-year course of study like the standard U.S. bachelor's degree, and (b) it did not comport with the labor certification, which also specified four years of college-level study.

On appeal, counsel has submitted a brief, a certification relating to another academic degree the beneficiary received in India in 1995, and documentation relating to the petitioner's recruitment attempts for the proffered position in 2003.

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 Form ETA 750 shows that the DOL assigned the occupational code of 030.162-014, and the title of Programmer Analyst, 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.⁴

⁴See <http://www.bls.gov/soc/socguide.htm>. Prior to O*NET, the DOL used a different occupational classification system – the Dictionary of Occupational Titles (DOT). The O*NET website contains

In the instant case, the DOL categorized the offered position under the DOT code of 030.162-014 (programmer analyst), which translates to the SOC code of 15-1121.00 (computer systems analyst). The O*NET online database states that this occupation falls within Job Zone Four.

The DOL assigns a standard vocational preparation (SVP) of 7 to 8 for Job Zone Four occupations. Most of the occupations in Job Zone Four require a four-year bachelor's degree, but some do not. See <http://www.onetonline.org/link/summary/15.1121.00> (accessed November 28, 2011). Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

A considerable amount 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.* 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.

As previously noted, the Form ETA 750 in this case was certified by the DOL. It is useful, therefore, to address 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 [now Secretary of Homeland Security] 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.⁵ 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).⁶ *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 [immigrant visa

⁵ Immigration and Naturalization Service, the predecessor organization to U.S. Citizenship and Immigration Services (USCIS).

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

category] 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. 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 have 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. *See 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 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.

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. *See 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.

We note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), in which 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. *See 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. *Id.* 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. *Id.* at 17, 19. 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.

Further, the employer’s subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 14 n. 7. The AAO 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.

With this type of evidence in mind, the Director issued a request for evidence (RFE) to the petitioner on April 3, 2008, requesting the submission of newspaper advertisements it placed for the junior programmer position in 2003. In response to the RFE, the petitioner submitted copies of three newspaper and internet advertisements for the position, each of which stated that a bachelor’s degree in business administration, computer science, computer engineering, or electrical engineering, along with one year of experience, was required. In addition, the petitioner submitted a copy of a letter from its Vice President, ██████████ to the DOL, dated September 18, 2003, documenting the petitioner’s recruitment efforts and stating that “no resumes of qualified applicants for the specific position . . . were received” during the recruitment period of January to August 2003. The letter went on to state that the beneficiary was “[t]he only applicant who meets the minimum requirements for the position.” ██████████ cited the beneficiary’s Bachelor of Science degree from Panjab University and listed the diploma and certificates he earned in subsequent years from various Indian institutions upon completion of computer-related courses and training programs. According to ██████████ “[t]hese studies are equivalent to a bachelor’s degree in computer science granted by accredited colleges and universities in the United States.”

In support of the current appeal, the petitioner has resubmitted copies of the foregoing materials. Counsel asserts that it was the “understanding” of the petitioner throughout the recruitment process that “even a three-year bachelor’s degree [applicant] is qualified for the position as long as the applicant . . . submit[s] a credential evaluation showing the ‘foreign educational equivalent’ of a U.S. bachelor’s degree.” Counsel disagrees with the Director’s finding that the petitioner’s advertisements made it clear that a four-year degree was required. In counsel’s view, the

advertisements for the position stated only that a bachelor's degree in one of the listed specialty areas was required, not that the bachelor's degree had to be four years in length.

The AAO finds counsel's position unpersuasive. Counsel's assertion that the petitioner was always willing to accept a three-year bachelor's degree is directly contradicted by the labor certification, which states that four years of college, at the minimum, are required for the position. The labor certification states that a bachelor's degree is required, without qualification. It does not state that a combination of lesser degrees adding up to four or more years of study, or a three-year year degree plus work experience, will be considered "equivalent to" a four-year bachelor's degree. Nor did the newspaper and internet job advertisements issued in 2003 indicate that any such combination of credentials would be considered "equivalent to" a bachelor's degree. Each of the advertisements stated that a bachelor's degree was required, with no indication that anything less than a four-year degree, standard in the United States (*see Matter of Shah, supra*), would be acceptable. [REDACTED] letter of September 18, 2003 to the DOL is internally inconsistent. After stating that no resumes had been received from qualified applicants, [REDACTED] stated that the beneficiary was the only applicant who met the "minimum requirements" for the position. [REDACTED] then proclaimed the beneficiary's three-year bachelor's degree from Panjab University in combination with his credentials from subsequent computer-related programs and training in India to be the equivalent of a U.S. bachelor's degree in computer science. The "minimum requirements" for the job so described by [REDACTED] however, deviate from the terms of the labor certification application he signed the very same day – September 18, 2003 – which specified a four-year bachelor's degree.

As previously noted, the petitioner has submitted an evaluation of the beneficiary's educational credentials by Career Consulting International (CCI) as evidence that the beneficiary meets the educational requirements of the labor certification. According to CCI, the beneficiary's Bachelor of Science degree from the University of Panjab is equivalent to a bachelor's degree in computer science from an institution of postsecondary education in the United States. The crux of CCI's evaluation is that the academic substance of the beneficiary's three-year degree in India – measured by course content, hours in the classroom, and credits earned – is equivalent to a four-year degree in the United States. Regardless of the veracity of this conclusion, a three-year bachelor's degree in India does not comport with the requirement in the petitioner's labor certification of a four-year bachelor's degree. Moreover, it is not a "foreign equivalent degree" to a U.S. baccalaureate degree, as required under 8 C.F.R. § 204.5(l)(3)(ii)(C) for a professional position. 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, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

As an additional resource, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁷ According to its website, www.aacrao.org, is "a nonprofit, voluntary, professional

⁷ 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. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich.

association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions in over 40 countries.” Its mission “is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at [www.aacrao.org/publications/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 states that a bachelor of science degree in India is awarded upon completion of two to three years of tertiary study beyond the Higher Secondary Certificate (which is equivalent to a high school diploma in the United States). According to EDGE, therefore, the Indian bachelor of science degree is comparable to two to three years of university study in the United States. It is not the equivalent of a bachelor’s degree in the United States.

The last piece of evidence cited by counsel on appeal is a statement dated May 5, 2008 from a lecturer at a college in Ludhiana, India, affiliated with Panjab University, that the beneficiary “passed a B.Sc. Non-Medical degree in 1995.” No degree certificate has been submitted, nor any transcript of the beneficiary’s coursework. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). Thus, the statement from the college lecturer has little evidentiary value.

In accordance with the foregoing analysis, the AAO determines that the beneficiary does not have a U.S. baccalaureate degree or a foreign equivalent degree, as required for professional positions under 8 C.F.R. § 204.5(l)(3)(ii)(C) and for the junior programmer position in particular on the certified Form ETA 750. Therefore, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act.

August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

Job Location

Beyond the decision of the Director, the AAO notes that both the labor certification (Form ETA 750, Part A, Box 7) and the immigrant visa petition (Form I-140, Part 6, Box 4) identify the address where the work of the junior programmer was to be performed as [REDACTED]

[REDACTED] The petitioner's mailing address was in Torrance, California, however, and the place where the beneficiary began working for the petitioner in 2003 (with a nonimmigrant H-1B visa) was evidently there as well. On August 31, 2011, the AAO sent a Request for Evidence and Notice of Derogatory Information (RFE/NDI) to the petitioner, with a copy to counsel. The AAO indicated that other companies appeared to share the above address in Wilmington, Delaware, and advised the petitioner to submit documentary evidence of its business activities there and its intention to employ the beneficiary at the Wilmington address.

Counsel filed a timely response on September 30, 2011, stating that the petitioner was operating at the Wilmington address, and intended to employ the beneficiary there, at the time the immigrant visa petition was filed in March 2007. Copies were submitted of the petitioner's federal and state (California and Delaware) corporate income tax returns for the years 2006 and 2007. The Delaware returns confirm that the petitioner's business address in the state in both of those years was on [REDACTED]

[REDACTED] However, no evidence was submitted that the beneficiary worked at that location in 2006 and 2007, or in any subsequent year. Furthermore, both the 2006 and 2007 Delaware returns show in Schedule 3-D that the petitioner paid no wages in Delaware and had no receipts or income in Delaware. Thus, it is clear that the petitioner did not operate a business in Delaware. Whatever job opportunity existed for the beneficiary, that opportunity was not in Delaware, a state in which the petitioner had no income and no revenue and paid no wages.

In the RFE/NDI the AAO asked the petitioner for a list of all employees at the Wilmington work location in 2007, as well as Delaware Quarterly Forms UC-8 and UC-8A from the years 2007-2010, but no such documentation was submitted. The RFE/NDI also asked for photographs of the petitioner's business premises and the beneficiary's prospective workplace in [REDACTED] [REDACTED] as well as a copy of the petitioner's lease for [REDACTED]. None of this documentation has been furnished to the AAO. Counsel also admits that the Wilmington location is no longer occupied by the petitioner. Since the certified job opportunity no longer exists, the petition cannot be approved.

Based on this failure to submit all of the documentation requested, the AAO determines that the petitioner has not demonstrated the existence of a *bona fide* job offer to the beneficiary in Wilmington, Delaware, in 2007 or any time thereafter. As provided in 8 C.F.R. § 103.2(b)(14), the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. On this ground as well the petition cannot be approved.

⁸ The tax returns identify the address as [REDACTED]. The labor certification and visa petition in this proceeding identify the address as [REDACTED].

Conclusion

For the reasons discussed in this decision, the petitioner has not established that the beneficiary has the requisite education for the proffered position, in accordance with the labor certification, or that a *bona fide* job offer for the beneficiary ever existed in Wilmington, Delaware. The petition will be denied for both of these reasons, with each considered as an independent and alternative basis for denial.

The burden of proof rests solely with the petitioner. See Section 291 of the Act, 8 U.S.C. § 1361. For the reasons discussed above, the petitioner has not met that burden in this proceeding.⁹

ORDER: The appeal is dismissed.

⁹ According to counsel, the beneficiary filed an application for adjustment of status (Form I-485) in July 2007. After more than 180 days had expired with the adjustment application still pending, counsel states that the beneficiary changed jobs, accepting a position in the same occupational classification with another employer. This course of events is confirmed by USCIS records and other documentation in the beneficiary's A-file.

The Form I-485 [REDACTED], which was actually filed by the beneficiary on August 31, 2007, was denied on July 16, 2008. On November 2, 2010, [REDACTED] of Bloomington, Minnesota, filed an ETA Form 9089 on behalf of the beneficiary for a systems administrator position. [REDACTED] indicated that the beneficiary's employment had begun in April 2008 and listed the beneficiary's previous employer as [REDACTED] of Lawndale, California (close by Torrance) from July 2003 to April 2008. The labor certification application was approved by the DOL on March 2, 2011. A Form I-140 was then filed on March 23, 2011, and approved by USCIS under premium processing on March 31, 2011. Unlike the Form I-140 filed by the instant petitioner, the immigrant visa petition filed by [REDACTED] sought classification of the beneficiary as a skilled worker under section 203(b)(3)(A)(i) of the Act, based on the underlying labor certification requiring four years of experience in the "job offered" but no educational degree. Thus, the beneficiary's lack of a foreign equivalent degree to a U.S. baccalaureate degree did not make him ineligible for an employment-based immigrant visa pursuant to the [REDACTED] petition.