

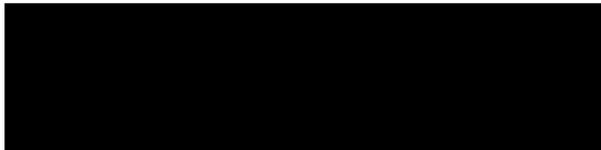
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U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

**PUBLIC COPY**



**U.S. Citizenship  
and Immigration  
Services**



B6

DATE: DEC 14 2019 Office: NEBRASKA SERVICE CENTER

FILE: 

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, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a manufacturing and supply company. It seeks to employ the beneficiary permanently in the United States as a mechanical engineer. As required by statute, a Form ETA 750,<sup>1</sup> Application for Alien Employment Certification approved by the United States Department of Labor (USDOL), 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).

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), provides that “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.”

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition’s priority date. *See Matter of Wing’s Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on December 29, 2003.<sup>2</sup> The Form I-140, Immigrant Petition for Alien Worker, was filed on December 4, 2006.

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

Duties included researching, planning and designing mechanical and electromechanical products and systems for heavy duty and light duty trucks in the transit industry. Responsible for reviewing customer’s design proposal and specifications to determine the feasibility of design. Design required product and coordinate the fabrication and testing of the products to the original specification requirements.

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<sup>1</sup> 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).

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

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 as follows:

Block 14:

Education (number of years)

Grade school	Blank
High school	Blank
College	Blank
College Degree Required	4 yrs Bachelor of Engineering Degree or similar * Obtained through a combination of University coursework and/or directly related professional work experience. <sup>3</sup>
Major Field of Study Experience:	Mechanical Engineering or Equivalent
Job Offered (or) Related Occupation	0
Related Occupation	Blank

Block 15:

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<sup>3</sup> It does not appear as if this additional qualifier to the requirement of a four-year bachelor's degree was certified by the USDOL. It was typed manually in item 13 and corrected to item 14 by a line drawn in blue ink. In an affidavit dated September 22, 2011, counsel states he typed the qualifier himself prior to submitting the labor certification to the USDOL for certification. Counsel submits no evidence to support this assertion. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988). Counsel's statement does not alter the fact that the USDOL did not initial this apparent correction to the Form ETA 750. Therefore, AAO is not accepting this purported correction. Counsel did submit a copy of the December 5, 2003 recruitment report in which the petitioner states on page 2 that it would accept a combination of university coursework and/or work experience in lieu of a bachelor's degree. However, this does not establish that his ink and typewriter addition to the Form ETA 750 was present on the Form ETA 750 when submitted to the USDOL. Regardless, as explained *infra*, this addition would be irrelevant to the AAO's consideration of the petitioner's eligibility for the benefit sought in this matter. As the petition is for a "professional" position as defined by statute, the beneficiary must have earned a bachelor's degree even if the Form ETA 750 includes an allowance for a combination of education and experience.

Other Special Requirements Willingness to work overtime on an as needed basis without prior notice including weekends.

As set forth above, the proffered position requires four years of college culminating in a Bachelor of Engineering degree in mechanical engineering or equivalent.

On Part B of the labor certification, signed by the beneficiary, he listed his prior education as a Diploma in Mechanical Engineering from Kerala State Board of Technical Education, Kerala, India, from September 1980 to July 1983.

In support of the beneficiary's educational qualifications, the record contains a copy of his mechanical engineering diploma dated November 10, 1983, from the Deputy Controller of Technical Examinations (Kerala) showing he completed the prescribed course of study at Carmel Polytechnic, Alleppey, and that he passed the final examination held in July 1983. The record also contains a certificate dated May 2, 2003 from the Principal of Carmel Polytechnic, Director of Academic Affairs showing that he graduated from Carmel Polytechnic, Alleppey, after completing a three year course of study. The record contains an evaluation of the beneficiary's credentials dated February 19, 2008, prepared by [REDACTED] New York, New York, who concludes that the beneficiary's degree is equivalent to a bachelor of engineering in mechanical engineering from an accredited university in the United States. A second evaluation from [REDACTED] dated September 27, 2011, from the University of Maryland School of Business in College Park, Maryland, concludes that the beneficiary's degree is equivalent to the completion of the first year of course work in a four-year bachelor's degree program at an accredited institution of higher learning in the United States.<sup>4</sup> The petitioner offers no explanation for why the two evaluations so wildly

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<sup>4</sup> On August 31, 2011, the AAO issued a Notice of Derogatory Information (NDI) noting that the AAO had reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) in considering whether the beneficiary's foreign education is a foreign equivalent degree to a U.S. bachelor's degree. According to its website, [www.aacrao.org](http://www.aacrao.org), is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent approximately 2,600 institutions in the United States and in over 40 countries." Its mission "is to serve and advance higher education by providing leadership in academic and enrollment 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_to_creating_international_publications.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. In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27,

differ from one another in their consideration of the beneficiary's educational credential. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director denied the petition on January 28, 2008. The director determined that the beneficiary did not meet the educational requirements specified on the labor certification as of the petition's priority date. As the Form ETA 750 requires a four-year bachelor's degree, the director concluded that the beneficiary did not meet this requirement because he has not earned a bachelor's degree or a foreign equivalent degree. Instead, the beneficiary has allegedly earned the equivalent to a bachelor's degree through a combination of education and experience, which is not permitted by the labor certification or the professional regulation.

On appeal, counsel states that the beneficiary possessed all of the required education, training, and experience as of the priority date. Counsel argues that a review of the Form ETA 750 makes clear that it is not a requirement of the job that the applicant must have a United States bachelor's degree or a foreign degree equivalent as the application is clear that experience equivalent to a bachelor's degree is adequate for the job. Counsel's reading of the labor certification ignores the plain language. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988).

The proffered position is for a mechanical engineer. Thus, it falls under section 101(a)(32) of the Act and is statutorily prescribed as a professional occupation. Additionally, Part A of the ETA 750 indicates that the USDOL assigned the occupational code of 17-2141 and title mechanical engineer, to the proffered position. The USDOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the USDOL (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 USDOL. 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

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2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

The AAO noted that EDGE did not suggest that the beneficiary's credential from India is a foreign equivalent degree to a U.S. bachelor's degree. Instead, EDGE indicates that a diploma in engineering represents attainment of a level of education comparable to up to one year of university study in the United States.

and occupations." O\*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States.<sup>5</sup>

In the instant case, the USDOL categorized the offered position under the SOC code 17-2141.00. The O\*NET online database states that this occupation falls within Job Zone Four.<sup>6</sup>

According to the USDOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. The USDOL 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." Additionally, the USDOL states the following concerning the related experience and training 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.* Because of the requirements of the proffered position, the USDOL's standard occupational requirements, and the statutory definition of "professional," the proffered position is for a professional.

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.

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

<sup>6</sup>According to O\*NET, most of the occupations in Job Zone Four require a four-year bachelor's degree. <http://online.onetcenter.org/help/online/zones> (accessed November 20, 2010).

At the outset, it is noted that 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 USDOL 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 U.S. Citizenship and Immigration Services (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, USDOL has the authority to make the two determinations listed in section 212(a)(14).<sup>7</sup> *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

\* \* \*

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

*Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).<sup>8</sup>

<sup>7</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

<sup>8</sup> The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

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

We note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 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. *Id.* 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

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The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

*Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9<sup>th</sup> Cir. 1984).

and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at \*17, 19. In the current matter, the job is a statutorily defined “professional” position. Therefore, the beneficiary must have a bachelor’s degree in order to be eligible for the offered job.

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

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) 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.) 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 1289, 1295 (5<sup>th</sup> 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) (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 member of the profession 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, we could not consider education earned at an institution other than a college or university.

Moreover, as advised in the Notice of Derogatory Information issued to the petitioner by this office, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).<sup>9</sup> According to 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_to_creating_international_publications.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. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>10</sup>

EDGE’s credential advice provides that a Diploma in Engineering is comparable to “up to one year of university study in the United States. Credit may be awarded on a course-by-course basis.”

As stated above, one of the credential evaluations submitted by the petitioner concludes that the beneficiary’s degree is equivalent to a bachelor of engineering in mechanical engineering from an accredited university in the United States while the second evaluation concludes that the beneficiary’s degree is equivalent to the completion of the first year of course work in a four-year bachelor’s degree program at an accredited institution of higher learning in the United States which is in accord with EDGE. 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, as in this case, 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).

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<sup>9</sup> According to its website, “AACRAO is a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.”

<sup>10</sup> 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. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. 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.

Additionally, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate.

The Form ETA 750 does not provide that the minimum academic requirements of four years of college and a Bachelor of Engineering degree might be met through one year of college. The copies of the notice(s) of Internet and newspaper advertisements, provided with the petitioner's response to the request for evidence issued by this office, also fail to advise any otherwise qualified United States workers that the educational requirements for the job may be met through a quantitatively lesser degree. Regardless, even if the petitioner intended the Form ETA 750 to allow for a combination of education and experience to qualify for the job, such a combination would not be permissible in this case. The proffered job is for a mechanical engineer, which is a statutorily-defined professional position. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). As explained above, a job defined by statute as a professional position requires a bachelor's degree. 8 C.F.R. § 204.5(l)(3)(ii)(C) and § 204.5(l)(2). As the beneficiary in this case does not have a bachelor's degree, he is ineligible for classification as a professional. It is not possible to classify the beneficiary as a skilled worker in the alternative because the job offered is statutorily defined as a professional position.

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

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.