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



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



B6

Date: Office: NEBRASKA SERVICE CENTER
DEC 16 2011

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:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry 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.

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 an insurance business. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor (DOL), accompanied the petition.¹ Upon reviewing the petition, the director determined that the beneficiary did not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), and that the beneficiary did not meet 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

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

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.

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).

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).³ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

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

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (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

³ Based on revisions to the Act, the current citation is section 212(a)(5)(A).

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.

In the instant case, the petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).⁴ The AAO will first consider whether the petition may be approved in the professional classification.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(1)(2).

⁴ Employment-based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. The petitioner indicates the requested preference classification by checking a box on the Form I-140. The Form I-140 version in effect when this petition was filed did not have separate boxes for the professional and skilled worker classifications. In addition, the petitioner did not specify elsewhere in the record of proceeding that the petition should only be considered under one of the two classifications. Accordingly, the AAO will consider whether the petition may be approved for both the professional and skilled worker categories.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

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.

Section 101(a)(32) of the Act defines the term “profession” to include, but is not limited to, “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” If the offered position is not statutorily defined as a profession, “the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.” 8 C.F.R. § 204.5(l)(3)(ii)(C).

In addition, the job offer portion of the labor certification underlying a petition for a professional “must demonstrate that the job requires the minimum of a baccalaureate degree.” 8 C.F.R. § 204.5(l)(3)(i)

Therefore, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor’s degree as a minimum for entry; the beneficiary possesses a U.S. bachelor’s degree or foreign equivalent degree from a college or university; and the job offer portion of the labor certification requires at least a bachelor’s degree or foreign equivalent degree. The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification.⁵

It is noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional. 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).

It is significant that both section 203(b)(3)(A)(ii) of the Act and the relevant regulations use the word “degree” in relation to professionals. A statute should be construed under the assumption that

⁵ 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 (5th Cir. 1987). It can be presumed that Congress' narrow requirement of a single "degree" for members of the professions is deliberate.

The regulation also 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." 8 C.F.R. § 204.5(l)(3)(ii)(C) (Emphasis added.). 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). However, for the professional category, it is clear that the degree must be from a college or university.

Thus, the plain meaning of the Act and the regulations is that the beneficiary of a petition for a professional must possess a degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree.

On Part B of the labor certification, signed by the beneficiary, the beneficiary listed his prior education as a master's degree in business administration from the College of Business Administration, Lahore, Pakistan; a "Bachelor of Science" degree from the University of Punjab, Government College, Lahore, Pakistan; and a certificate in programming from the University of the Punjab, Department of Mathematics, Lahore, Pakistan.

In support of the beneficiary's educational qualifications, the record contains a copy of the diploma for a master's degree in business administration from College of Business Administration, Lahore, Pakistan (an affiliate of Philippine School of Business Administration, Manila, Philippines); a letter dated July 23, 1995 from the registrar with the College of Business Administration certifying the beneficiary's attendance from January 1994 to July 1995 and his completion of the requirements for the master's in business administration (major in finance) degree; a diploma and transcripts for a "Bachelor of Science" degree from the University of Punjab dated September 1980, stating that the beneficiary was placed in the Third Division; and a certificate in programming dated March 25, 1985 from the Department of Mathematics, University of the Punjab, New Campus, Lahore, Pakistan.

The record contains two certificates awarded to the Philippine School of Business Administration from the Philippine Association of Colleges and Universities Commission on Accreditation (PACUCOA) for the Business Administration Major in Management Program and the Philippine School of Business Administration Accountancy Program, which were both given on December 12, 2005 in the Philippines, and indicate accreditation validity to December 2007; and information from the Commission on Higher Education in the Philippines about the Philippine School of Business Administration.

The record also contains the following evaluations of the beneficiary's educational credentials:⁶

- Evaluation by [REDACTED] of The Trustforte Corporation. [REDACTED] described the beneficiary's "Bachelor of Science" degree as equivalent to two years of academic studies towards a bachelor of science degree at an accredited U.S. college or university. [REDACTED] further stated that the advanced post-secondary program in business administration and finance at the College of Business Administration is from an accredited institution of higher education in Pakistan. [REDACTED] indicated that the beneficiary's two years of university-level credit coupled with the concentrated studies in business administration and finance are the equivalent of a bachelor's degree in business administration with a concentration in finance from an accredited college or university in the United States. [REDACTED] based his assessment on "the reputations of The University of the Punjab and the College of Business Administration, the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework."
- Evaluation by [REDACTED] an associate professor with the University of Maryland, Robert H. Smith School of Business, College Park, Maryland. [REDACTED] indicated that the beneficiary received the equivalent of a U.S. high school diploma and completed two years of bachelor's level studies. Further, [REDACTED] stated that the beneficiary completed two years of specialized courses in business administration and finance at the College of Business Administration's Master of Business Administration program, which is substantially similar to bachelor's level coursework in business administration at an accredited institution of high learning in the United States. [REDACTED] conveyed that he bases his evaluation on the length of coursework completed by the beneficiary and the length of study required by the degree program in the United States. [REDACTED] stated that the beneficiary's academic history reflects satisfaction of the requirements of a bachelor's degree in business administration program at an accredited institution of higher education in the United States. [REDACTED] further stated: "The College of Business Administration is a government-recognized institute of higher education in Lahore, Pakistan. The College is affiliated with the Philippine School of Business Administration, a government-recognized institute of higher education in the Philippines that achieved government recognition in 1967."

⁶ USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

- Evaluation by [REDACTED] a professor with University of Montevallo, Michael E. Stephens College of Business, Alabama. [REDACTED] indicated that the beneficiary completed 12 years of primary and secondary education in Pakistan, a two-year bachelor's program, and two years attending the Pakistani Master of Business Administration degree program, resulting in a total of 16 years of education comparably equivalent to the U.S. bachelor's degree level. [REDACTED] further stated that the beneficiary's education is equivalent to a U.S. bachelor of business administration degree in finance from a regionally accredited college or university in the United States. [REDACTED] also stated that the beneficiary's "Bachelor of Science" degree and master's degree in business administration are from accredited institutions.
- Evaluation of [REDACTED] evaluation specialist, and [REDACTED] with Educational Assessment, Inc. They conveyed that the beneficiary's "Bachelor of Science" degree is fully equivalent to two years of a four-year baccalaureate degree from a university in the United States, and that, coupled with the beneficiary's completion of the master's degree in business administration indicate that the beneficiary has earned "a single foreign degree that is equivalent to a U.S. Bachelor of Business Administration (BBA) degree in Finance from a regionally accredited college or university in the United States." [REDACTED] and [REDACTED] stated that the submitted attachments demonstrate that the Pakistani master's degree (with some exceptions) and Pakistani master's degree in business administration "warrant admission to graduate/master's study in the United States and hence is a single degree considered equivalent to a U.S. bachelor's degree."⁷ Lastly, they conveyed that their "assessment is based primarily on the placement guidelines set out by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) as to foreign education credentials required for admission to American universities and colleges, as well as other reliable sources and independent research conducted by the office of Educational Assessment, Inc."
- Evaluation by [REDACTED] of Foundation for International Services, Inc. (FIS). In her evaluation, [REDACTED] found that the beneficiary's "Bachelor of Science" degree is equivalent to two years of university-level credit from an accredited college or university in the United States. [REDACTED] states that the beneficiary's master's degree in business administration is equivalent to a master's degree in business administration degree from a college or university *that does not have regional accreditation in the United States*. [REDACTED] concluded that, based on a combination of the beneficiary's two years of university-level credit with work experience, the beneficiary earned the equivalent of a bachelor's degree in accounting from an accredited college or university in the United States.

⁷ Hass, G. James, Ed. *Foreign Educational Credentials Required for Consideration of Admission to Universities and Colleges in the United States*, 4th Ed. Washington D.C., 1994. Prepared by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) for the U.S. Agency for International Development.

We do not dispute that a master's degree from a recognized or accredited university in Pakistan following a two- or three-year bachelor's degree is equivalent to a U.S. bachelor's degree. We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁸ 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. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁹

EDGE provides a great deal of information about the educational system in Pakistan and confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate and represents attainment of a level of education comparable to two to three years of university study in the United States. EDGE does not state that a two-year degree from Pakistan is a foreign equivalent degree to a U.S. baccalaureate. But EDGE does state that a two-year master's degree from Pakistan represents attainment of a level of education comparable to a bachelor's degree in the United States.

However, if the beneficiary's degree is not from an officially recognized or accredited university, we will not conclude that it is equivalent to a U.S. degree. [REDACTED] evaluation stated that the beneficiary's master's degree is not from an accredited educational institution. The other evaluators base their conclusion that the beneficiary has the equivalent of a U.S. bachelor's degree on having

⁸ 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."

⁹ 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.

attended accredited educational institutions in Pakistan.¹⁰

According to EDGE:

Higher education [in Pakistan] is offered through private and public degree granting institutions. The academic curriculum is varied and consists of degree offerings in arts, science, engineering, medicine, business, technology etc. The Higher Education Commission (HEC) has established guidelines for establishing institutions of higher education. HEC is responsible for monitoring the quality and assessment of degree granting institutions.

Besides the private and public universities approved by the HEC, there are Centers of Excellence and Research. These represent the higher tier of higher education institutions that are considered to be national excellence.

An important aspect of the Pakistan educational system is the role of authorities established by statute for the regulation and maintenance of uniform standards of education and training in professional subjects. Prior approval from these authorities is essential for starting new institutions, introduction of new courses, and fixing the intake capacity in each course.

See <http://edge.aacrao.org/country/overview/pakistan-overview> (last accessed November 22, 2011).

The petitioner has not established that the beneficiary obtained his master's degree from a private or public university that is recognized by the HEC and/or is one of the Centers of Excellence and Research. The HEC maintains a website of recognized college and universities in Pakistan at <http://www.moe.gov.pk/charteredUniversities.htm> and Centers of Excellence at <http://www.hec.gov.pk/INSIDEHEC/DIVISIONS/AECA/Pages/CentreofExcellence.aspx>. The College of Business Administration is not listed at either website (last accessed November 14, 2011).

The petitioner claims that the College of Business Administration is accredited because it is an affiliate of the Philippine School of Business Administration, which has accreditation in the Philippines, and that the College of Business Administration and the Philippine School of Business

¹⁰ *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), states:

It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.

Administration are essentially the same institution.¹¹ However, the evidence in the record does not establish that the Philippine School of Business Administration was affiliated with the College of Business Administration at the time the beneficiary obtained his master's degree, and that the Philippine School of Business Administration was an accredited institution at the time the beneficiary obtained his master's degree. In addition, the Philippine School of Business Administration is not on the list of Higher Education Institutions (HEIs) offering programs/courses with recognition/permits validly issued by the Commission on Higher Education in the Philippines. *See* <http://www.ched.gov.ph/> (accessed October 14, 2011).

More importantly however, even if the Philippine School of Business Administration was an accredited institution affiliated with the College of Business Administration at the time the beneficiary obtained his master's degree, the petitioner has not demonstrated how affiliation with the Philippine School of Business Administration somehow confers accreditation upon the College of Business Administration. In order for the AAO to consider the beneficiary's degree to be equivalent to a U.S. degree, it must be from an officially recognized or accredited college or university. Merely being affiliated with an accredited institution is not sufficient.

Official recognition or accreditation ensures that the institution of higher education has met a basic level of quality. The accrediting bodies have adopted criteria reflecting the qualities of a sound educational program and have developed procedures for evaluating institutions or programs to determine whether or not they meet these criteria. Accordingly, USCIS will not recognize a program from an unaccredited educational institution for purposes of satisfying the educational requirements for classification in an employment-based immigrant petition.

No independent objective evidence has been provided by the petitioner in which to establish that the beneficiary's master's degree is from an officially accredited or recognized educational institution. Therefore, the petitioner has failed to establish that the beneficiary has a "United States baccalaureate degree or a foreign equivalent degree," from a college or university as required for classification as a professional. Accordingly, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii).

The AAO will also consider whether the petition may be approved in the skilled worker classification. Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) states:

¹¹ The Philippine School of Business Administration's website does not indicate that it has an affiliation with the College of Business Administration in Lahore, Pakistan. *See* <http://www.psbacq.psba.edu/> (last accessed November 14, 2011).

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 [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of job offered set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4). The labor certification must require at least two years of training and/or experience. Relevant post-secondary education may be considered as training. *See* 8 C.F.R. § 204.5(l)(2).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least two years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

Therefore, 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 position. USCIS will not accept a combination of lesser education and/or experience when the 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).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by 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]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The required education, training, experience and skills for the offered position are set forth at Part A of the labor certification. In the instant case, the labor certification states that the offered position has the following minimum requirements:

Block 14:

Education (number of years)

Grade school	4	
High school	8	
College	4	
College Degree Required		B.S. or B.A.
Major Field of Study		Accounting or related field

Experience:

Job Offered	1 year
(or)	
Related Occupation	1 year

Block 15:

Other Special Requirements: None required

The labor certification does not permit a lesser degree, a combination of lesser degrees, and/or a quantifiable amount of work experience.

The record also contains evidence of the petitioner's intent concerning the educational requirements of the proffered position. Specifically, the record contains the notice of filing of the labor certification, that was signed by the petitioner and dated December 15, 2004, and which stated the requirement of the proffered position is a "Bachelor's degree in Business. Adm., Accounting or related profession plus 1 year of experience in insurance field." The petitioner did not express on the notice that it would accept a combination of education and work experience in lieu of a bachelor's degree.¹²

The submitted documents failed to advise the DOL and potentially qualified U.S. workers that the educational requirements for the offered position may have been met through less than a four-year U.S. bachelor's degree or a foreign equivalent degree.

As noted above, based on the terms of the certified Form ETA 750, the proffered position requires four years of college, a bachelor's degree in accounting or a related field, and one year of experience in the job offered or a related occupation. The Form ETA 750 does not provide that the minimum academic requirements might be met through a combination of degrees or some other formula other than that explicitly stated on the Form ETA 750. Furthermore, the petitioner did not express in the

¹² The petitioner also submitted twelve internet job postings of other employers in order to demonstrate that employers require a bachelor's degree for an accountant position. The postings are not relevant to the stated requirements on the labor certification. Further, none of the employers state in their job postings that a combination of education and work experience in lieu of a bachelor's degree is acceptable.

notice of filing that it would accept a combination of education and work experience in lieu of a bachelor's degree.

The plain language of the labor certification states that the offered position requires a U.S. bachelor's degree or a foreign equivalent degree. The petitioner failed to establish that the terms of the labor certification are ambiguous or unclear and that it intended the labor certification to require less than a U.S. bachelor's degree or a foreign equivalent, as that intent was expressed during the labor certification process to the DOL and potentially qualified U.S. workers. As is explained above, the petitioner has not established that the beneficiary possesses a foreign degree equivalent to a U.S. bachelor's degree. Therefore, the petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification, and the beneficiary accordingly does not qualify for classification as a skilled worker.¹³

We are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that USCIS "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." 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 federal 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. It is also noted that the labor certification in this case does not state that the offered position requires a bachelor's degree "or equivalent."

We also note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification specified an educational requirement of four years of college and a "B.S. or foreign equivalent." The district court determined that "B.S. or foreign equivalent" relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word "equivalent" in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14.

¹³ It is noted that, for classification as a professional, the beneficiary must also meet all of the requirements of the offered position set forth on the labor certification. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 labor certification 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 summary, the petitioner failed to establish that the beneficiary possessed a U.S. bachelor's degree or a foreign equivalent degree from a college or university as of the priority date. The petitioner also failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act or as a skilled worker under 203(b)(3)(A)(i) 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.