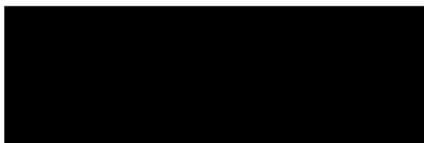


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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
U.S. Citizenship  
and Immigration  
Services



B6

Date: Office: TEXAS SERVICE CENTER

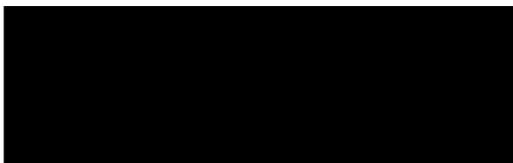
FILE: 

DEC 28 2011

IN RE: Petitioner:   
Beneficiary: 

PETITION: Immigrant petition for Alien Worker as an Other Worker 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,

*Kerac S. Poulos for*

Perry Rhew  
Chief, Administrative Appeals Office

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

The petitioner is an applications/infrastructure development company. It seeks to employ the beneficiary permanently in the United States as a software engineer/developer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director denied the petition, stating that the record did not establish that the beneficiary had the required education as of the priority date. The director denied the petition accordingly.

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.

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

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup>

On Part 2.g. of the Form I-140, the petitioner indicated that it was filing the petition for an unskilled, other worker pursuant to section 203(b)(3)(A)(iii) of the Act. The petitioner has not established that the petition requires less than two years of training or experience such that the beneficiary may be qualified for classification as an unskilled worker.<sup>2</sup>

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<sup>1</sup> 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).

<sup>2</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9<sup>th</sup> Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir.

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

Block 14:

Education (number of years)

Grade school	--
High school	--
College	4
College Degree Required	BS
Major Field of Study	CS or related/equivalent

Experience:

Job Offered	3	
(or)		
Related Occupation	3	Programmer/Database Administrator

Block 15:

Other Special Requirements

Exp. in database administration, Client/Server applications, PowerBuilder, PFC, Oracle, Stored procedures, triggers, Java, Delphi, OO Technologies, Developer 2000, Windows/NT, UNIX

As set forth above, the proffered position requires four years of college education culminating in a Bachelor of Science degree in Computer Science or related/equivalent, three years of experience as a software engineer/developer or in the alternate profession of programmer/database administrator, and the special requirements listed in block 15. However, the petitioner requested the other worker classification on the Form I-140, which requires less than two years of training and/or experience. The labor certification submitted does not support the visa classification requested and the petition is denied on this basis.

Further, 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 (Acting Reg'l Comm'r 1977). The priority date of the petition is April 12, 2002, which

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2004) (noting that the AAO conducts appellate review on a *de novo* basis).

is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).<sup>3</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on October 2, 2008.

In support of the beneficiary's educational qualifications, the record contains a diploma from the University of Kerala in India awarding the beneficiary a Bachelor of Science degree in Chemistry, Mathematics, and Physics in April 1990 and 1991. The petitioner submitted the corresponding transcripts demonstrating that the degree required three years of college education, with no computer courses listed in any year. The petitioner also submitted a Postgraduate Diploma in System Analysis awarded to the beneficiary by N.S.S. Computer Training Centre in December 1993 and its corresponding transcripts, and transcripts from N.S.S. Computer Training Centre relating to the beneficiary's advanced post graduate diploma in systems analysis dated 1995. The petitioner concludes that the beneficiary has the equivalent of a U.S. bachelor's degree.

In support of this contention, the petitioner submitted three credentials evaluations. The first, a credentials evaluation from [REDACTED] of the Washington Evaluation Service, states that the beneficiary's education is equivalent to a Bachelor of Science in Chemistry, Mathematics, and Physics with a second major in Computer Science. Mr. [REDACTED] conclusion is based on him finding that the beneficiary's three-year Indian Bachelor of Science degree is equivalent to a four-year U.S. bachelor's degree in Chemistry, Mathematics, and Physics and that the beneficiary's additional 1.5 years of study for his post graduate diploma in systems analysis at N.S.S. Computer Training Centre is equivalent to guidelines stating that a second major requires one to two years of additional study.

The record contains no evidence that N.S.S. Computer Training Centre is approved by the All India Council for Technical Education (AICTE) or is a recognized institution in India.<sup>5</sup> Accordingly, the program's academic value cannot be assessed. Additionally, the beneficiary did not list his postgraduate diplomas on Form ETA 750. In *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the

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<sup>3</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.

<sup>4</sup> The evaluation states that [REDACTED] received a master's and Ph.D degree in education from Loyola University, Chicago, Illinois.

<sup>5</sup> The AICTE was established in November 1945 as a "national level Apex Advisory Body to conduct survey[s] on the facilities on technical education and to promote development in the country in a coordinated and integrated manner." *See* <http://www.aicte-india.org/aboutus.htm> (accessed November 30, 2011). AICTE has the "statutory authority for planning, formulation and maintenance of norms and standards, quality assurance through accreditation, funding in priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring coordinated and integrated development and management of technical education in the country." *Id.* As AICTE ensures the foundation of norms and standards, the educational value of an unaccredited institution cannot be properly assessed.

Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

explains that a three-year Indian bachelor's degree is equivalent to a four-year U.S. degree because "[b]y the time Indian or British students enter university, they have completed a strenuous academic program at the high school level by passing 'O' and 'A' level examinations . . . [that] are academically equivalent to what would be considered by U.S. universities to be the first or freshman year of university study." notes that certain U.S. universities have three-year bachelor's degree programs and that those programs award credit for summer school or passage of the College-Level Examination Programs examination. Lastly, concludes that the beneficiary's nine years of experience in the field of computer science equate his "capabilities and competence in the area . . . to those of a university graduate with a Bachelor's degree in Computer Science."

In support of evaluation, the petitioner submitted the April 7, 2006 Midwest American Immigration Lawyers Association (AILA) Conference notes and April 12, 2007 AILA Liaison Committee Meeting notes and copies of a letter dated January 7, 2003 from of the INS Office of Adjudications to counsel in other cases, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2).

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from USCIS are not binding on the AAO or other USCIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm'r 1968); see also, Memorandum from Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, if the petitioner had requested the professional classification for the instant position, 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, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by Mr. correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. We do not find the determination of the credentials evaluation probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm'r 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, 17 I&N Dec. at 245.

The petitioner submitted a second evaluation from<sup>6</sup>, a chief evaluator for the European-American University, concluding that the beneficiary's three-year Indian bachelor's degree is the

<sup>6</sup> indicates he has a Doctor of Education in Postsecondary Education from the

equivalent of a four-year U.S. bachelor's degree in Mathematics, Physics and Chemistry.<sup>7</sup> The petitioner also submitted a third evaluation from [REDACTED] the director of Career Consulting International, concluding that the beneficiary holds a "Bachelor of Science Degree in Computer Science" based solely on the evaluation of the beneficiary's three-year Bachelor of Science degree. The fundamental argument of both evaluations is that a three-year bachelor's degree from India is equivalent to a 120 credit hour U.S. bachelor's degree, because an Indian three-year degree requires the same number of classroom hours (or "contact hours") as a U.S. bachelor's degree. The evaluations claim that a student must attend at least 15 50-minute classroom hours to earn one semester credit hour under the U.S. system. Since U.S. bachelor's degree programs require 120 credit hours for graduation, the evaluations conclude that a program of study with 1800 classroom hours is equivalent to a U.S. bachelor's degree. Since a three-year bachelor's degree from India allegedly requires over 1800 classroom hours, the evaluations conclude that it is equivalent to a U.S. bachelor's degree.

The evaluations base this equivalency formula on the claim that the U.S. semester credit hour is a variant of the "Carnegie Unit." The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject.<sup>8</sup> For example, 120 hours of classroom time was determined to be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school.<sup>9</sup> This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class. The Carnegie Unit does not apply to higher education.<sup>10</sup>

[REDACTED] explains that as the Indian school year is longer and requires the students to attend more hours of classes, the amount of time in years that a degree takes in India is insufficient to determine whether the degree is equivalent to one earned in the United States. [REDACTED] goes on at length about Carnegie Units and Indian degrees in general, concluding that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate, but makes no attempt to assign credits for individual

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Universidad Internacional, Panama, a Ph.D. in Humanities from the Universidad San Juan de la Cruz, Costa Rica, an MBA from the Universidad Empresarial de Costa Rica, a Master of Arts in History from Adam Smith University of Liberia, a Bachelor, subsequently Master of Arts status, University of Cambridge (Christ's College) UK, a Master of Music in Performance Studies: Applied Research, Royal College of Music, UK, a Bachelor of Music, First Class Honours, Royal College of Music, UK, and a Diploma of the Royal College of Music for Teachers.

<sup>7</sup> The labor certification application requires a Bachelor of Science degree in Computer Science or related/equivalent. [REDACTED] does not explain how the beneficiary's Bachelor of Science degree in Chemistry, Mathematics, and Physics is related to a Bachelor of Science degree in Computer Science.

<sup>8</sup> The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose motivation is "improving teaching and learning." See <http://www.carnegiefoundation.org/about-us/about-carnegie> (accessed November 30, 2011).

<sup>9</sup> <http://www.carnegiefoundation.org/faqs> (accessed November 30, 2011).

<sup>10</sup> See <http://www.suny.edu/facultysenate/TheCarnegieUnit.pdf> (accessed November 30, 2011).

courses. [REDACTED] credibility is diminished as he distorts an article by [REDACTED]. Specifically, [REDACTED] asserts that this article concludes that because the United States is willing to consider three-year degrees from Israel and the European Union, "Indian bachelor degree-holders should be provided the same opportunity to pursue graduate education in the U.S." While this is the conclusion of the article, the specific means by which Indian bachelor degree holders might pursue graduate education in the United States provided in the discussion portion of the article in no way suggests that Indian three-year degrees are, in general, comparable to a U.S. baccalaureate. Specifically, the article proposes accepting a first class honors three-year degree *following* a secondary degree from a CBSE or CISCE program *or* a three-year degree *plus* a post graduate diploma from an institution that is accredited or recognized by the NAAC and/or AICTE. The record contains no evidence that the beneficiary in this matter received a first class honors three-year degree *following* a secondary degree from a CBSE or CISCE program. Further, the record contains no evidence that the beneficiary in this matter received a three-year degree *plus* a post graduate diploma from an institution that is accredited or recognized by the NAAC and/or AICTE. Thus, [REDACTED] reliance on this article is disingenuous.

The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. [REDACTED] The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at [http://handouts.aacrao.org/am07/finished/F0345p\\_M\\_Donahue.pdf](http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf), accessed November 30, 2011 provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

Also in support of the evaluations, the petitioner submitted the "Findings from the 2006 CGS International Graduate Admissions Survey." On page 11 of this document, it is acknowledged that 55 percent of all institutions in the United States do not accept three-year degrees from outside of Europe. The survey does not reflect how many of the institutions that do accept three-year degrees from outside of Europe do so provisionally. If the three-year Indian baccalaureate were truly a foreign equivalent degree to a U.S. baccalaureate, it can be expected that the vast majority of U.S. institutions would accept these degrees for graduate admission without provision.

Finally, [REDACTED] relies on a United Nations Education Scientific and Cultural Organization (UNESCO) document. In support of his evaluation he submitted 138 pages of UNESCO materials, only two of which are relevant. The relevant language relates to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

'Recognition' of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State and deemed

comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define “comparable qualification.” At the heart of this matter is whether the beneficiary’s degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.<sup>11</sup>

In fact, UNESCO’s publication, “The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific” 82 (2d ed. 2004) (accessed on November 30, 2011 at <http://unesdoc.unesco.org/images/0013/001388/138853E.pdf> and incorporated into the record of proceedings), provides:

Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of

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<sup>11</sup> UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention on the recognition of qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same agreement. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. The United States was not a member of UNESCO between 1984 and 2002, and the Recommendation on the Recognition of Studies and Qualifications in Higher Education is not a binding legal agreement to recognize academic qualifications between UNESCO members. See <http://www.unesco.org> (accessed November 30, 2011).

recognition of such institutions and the courses offered by them are under serious consideration of the government of India. UGC, AICTE and AIU are developing criteria and mechanisms regarding the same.

*Id.* at 84. (Emphasis added.)

The third credentials evaluation from [REDACTED]<sup>12</sup> of Career Consulting International concluded that the beneficiary holds a “Bachelor of Science Degree in Computer Science” based solely on the evaluation of the beneficiary’s three-year Bachelor of Science degree. [REDACTED] assigned credits to the classes taken by the beneficiary “using the Carnegie Unit,” assessing a total of 120 credit hours to the beneficiary. As stated above, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees. Moreover, the petitioner has not demonstrated that the use of this system produces consistent results, as would be expected of a workable system. According to the Carnegie Foundation’s own website, <http://www.carnegiefoundation.org/faqs> (accessed December 5, 2011), the Carnegie Unit represents 120 high school hours in one subject. Fourteen “units” warrant admission to college. However, the Carnegie Unit does not apply to higher education, and the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees.

[REDACTED] also cites to the UNESCO conventions referenced above and cites a number of British and United States colleges that accept three-year degree holders to their Master’s degree programs. It is interesting to note that [REDACTED] summary of some of these colleges’ requirements indicate that the beneficiary would not be eligible. For example, the summary of the requirements for the University of Manchester indicate that holders of a three-year degree “who have obtained First Class at a reputable university” are eligible for the program, however, the beneficiary did not graduate in the first class. In addition, [REDACTED] cites to the portion of the CGS’ Research Report which states that only 56% of graduate schools in the United States would accept someone with the beneficiary’s degree into their Master’s program. The sources cited by [REDACTED] support the argument that some colleges and universities accept the three-year degree, but her sources do not support her ultimate conclusion that a three-year Bachelor of Science degree in Chemistry, Mathematics, and Physics from the University of Kerala is equivalent to a United States Bachelor of Science Degree in Computer Science.<sup>13</sup> The beneficiary’s transcripts indicate that he took no computer courses at the University of Kerala.

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<sup>12</sup> [REDACTED] indicates that she has a Master’s degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure [REDACTED] but does not indicate the field in which she obtained her doctorate. According to its website, [www.sorbon.fr/index1.html](http://www.sorbon.fr/index1.html) (accessed November 30, 2011), Ecole Superieure Robert de Sorbon awards degrees based on past experience.

<sup>13</sup> The evaluation additionally cites to: Findings from the CGS International Graduate Admissions Survey, Phase III: Admissions and Enrollment, October 2006. The survey discusses international enrollment and what countries students mainly come from to study in the United States, as well as the issue of three-year degrees. The survey states that three-year degrees have become less controversial in terms of student graduate admissions of those with three-year degrees, however,

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'r 1988). The evaluations, here, conflict. "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." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The relevant question here is whether the beneficiary met the qualifications of the certified labor certification.<sup>14</sup> In evaluating the beneficiary's qualifications, USCIS must look to the job offer

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acceptance of such degrees is not universal; The Lisbon Convention related to the Recognition of Qualifications concerning Higher Education in the European Region, dated April 11, 1997. The Lisbon Convention discusses recognition of qualifications issued by other parties to meet the general requirements for access to higher education, "unless a substantial difference can be shown between the general requirements for access in the Party in which the qualification was obtained and in the Party in which recognition of the qualification is sought;" the World Education News & Reviews, "Evaluating the Bologna Degree in the U.S.," dated March/April 2004. The article includes an assessment of the Bologna Process and terms "the new European bachelor's" degree based on three years as "quite distinct from its U.S. counterpart;" Findings from the 2005 CGS International Graduate Admission Survey III: Admissions and Enrollment, revised and dated November 2005. The CGS report relates to a "multi-year examination of international graduate admissions trends," and considers the number of students who applied, were accepted, where they were from, their field of study, as well as issues related to three-year degrees; and Documentation of the Carnegie Unit and the US college credit hour, from "A Recipe for Incoherence in Student Learning," by John Harris, Samford University, September 2002." The article discusses the development of theoretical measures to gauge education. The article notes that the Carnegie Unit was defined and accepted in 1909, that it does not account for student learning accurately, and that it has become more complicated by distance learning.

We note that all the attached materials describe theoretical arguments for accepting three-year degrees, that there is a dispute within the academic community related to acceptance of three-year degrees for graduate admission, and that in the future with increasing numbers of international students, the U.S. may need to accept or address the three-year degree issue. However, no study or report conclusively states that all three-year degrees should be accepted. Further, acceptance of the Bologna degree system in Europe is different than acceptance of three-year Indian or Australian degrees in the United States, in the context of employment-based immigrant visa petitions filed with USCIS.

<sup>14</sup> On appeal, the petitioner submitted its recruitment materials including advertisements for the position. These advertisements placed in *The Washington Post* are non-specific to the particular position and instead advertise multiple positions without giving any sort of indication as to the job requirements for the position. The recruitment report from the petitioner stated that the petitioner "received approximately 15 applications [for] the position as offered to [the beneficiary]. . . . None

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'r 1986). *See also, Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9<sup>th</sup> Cir. 1983); *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 about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The Form ETA 750 as certified required that the beneficiary have a four-year Bachelor of Science degree in Computer Science or an equivalent subject. The Form ETA 750 did not provide that the position requirements could be met through a bachelor's degree or an equivalent based on education, training and/or experience. The beneficiary fails to meet the requirements of the labor certification as the beneficiary does not have a four-year Bachelor of Science degree in Computer Science or an equivalent subject, and the labor certification submitted does not support the visa classification requested and the petition.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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of [the applicants] were interviewed through lack of the specified job skills and requirement as listed in the Labor Certification Application." The petitioner did not submit the materials received from the applicants so we are unable to ascertain what experience the applicants had or why they were deemed to be unqualified for the position.