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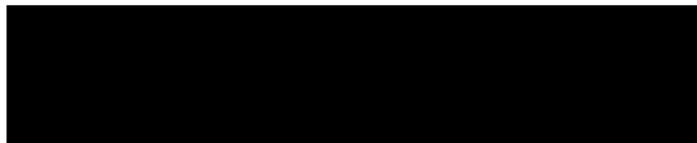
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **JAN 27 2011**
IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, 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 claims to be an import/export business. It seeks to permanently employ the beneficiary in the United States as an economist. 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).¹ As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.² The priority date of the instant petition is April 23, 2001, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on June 14, 2006.

The director's decision denying the petition concluded that the beneficiary did not possess the minimum education required to perform the offered position as set forth 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 AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.³

The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977).⁴ The duties and minimum requirements for the offered position are found at Part A of Form ETA 750. The duties of the position are described as follows:

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

² After March 28, 2005, the correct labor certification form is ETA Form 9089. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004).

³ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

⁴ 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.

Review economic information and data of clients and collect country's financial information. Provide feasibility studies regarding import and export of goods from India based on raw data. Monitor sale figures and review modifications based on adjustment in economic information. Review banking documents to approve loan structures, letters of credit and financial obligations.

The minimum education, training, experience and skills required to perform the offered position are set forth as follows:

EDUCATION

Grade School: 8 years

High School: 4 years

College: 4 years

College Degree Required: Bachelor's degree

Major Field of Study: Commerce

TRAINING: none required

EXPERIENCE: none required

OTHER SPECIAL REQUIREMENTS: "Previous experience to include review and issue banking documents. Preparation and feasibility studies of import and export of goods."

Therefore, the labor certification states that the proffered position requires four years of college culminating in a bachelor's degree with a major field of study of commerce. The labor certification does not state that the educational requirements of the offered position could be met with a bachelor's degree in a field of study other than commerce.

On Part B of the labor certification, signed by the beneficiary on April 20, 2001, the beneficiary states that he has a three-year bachelor's degree in commerce from Calcutta University, India, and a two-year master's degree in economics from Meerut University, India.

The petition as initially filed did not include documentary evidence pertaining to the petitioner's ability to pay the proffered wage⁵ or evidence of the beneficiary's claimed education. Accordingly,

⁵ The petitioner must establish that its job offer to the beneficiary is a realistic one. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). The regulation 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful

on January 31, 2007, the director issued a Request for Evidence (RFE), instructing the petitioner to submit documentary evidence of the petitioner's ability to pay the proffered wage and the beneficiary's educational credentials. On February 22, 2007, the petitioner submitted a response to the RFE containing its tax returns for 2001, 2002, 2003, 2004, and 2005, and a copy of the diploma for the beneficiary's three-year Bachelor of Commerce degree in "Advanced Accountancy, Auditing and Income Tax and Costing" from Calcutta University, India.

The director denied the petition on April 21, 2007. The director determined that the beneficiary's three-year Bachelor of Commerce degree from India is not a foreign equivalent degree to a four-year U.S. bachelor's degree in commerce required by the labor certification. The petitioner appealed the decision on May 4, 2007. The Form I-290B, Notice of Appeal or Motion, asserts that the director failed to consider that the beneficiary had completed a one-year pre-university course in India.

On July 14, 2007, different counsel supplemented the appeal with a brief and additional evidence of the beneficiary's education. The brief in support of the appeal states that the beneficiary also possesses a two-year Master of Arts degree in economics from Meerut University, India. The brief includes a copy of the beneficiary's diploma and transcripts for the master's degree. As is stated above, this degree is listed on Part B of the Form ETA 750B. However, the petitioner did not submit any documentary evidence of the beneficiary's master's degree prior to the instant appeal. The brief also includes an educational credentials evaluation prepared by [REDACTED], dated July 3, 2008. [REDACTED] evaluation states that the beneficiary's Master of Arts degree in economics from Meerut University, India is equivalent to a U.S. bachelor's degree in economics.⁶ The brief argues that the beneficiary's Master of Arts degree in economics, which

permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

Therefore, the petitioner must establish that it has possessed the continuing ability to pay the proffered wage beginning on the priority date.

⁶ The evaluation also states: "with regard to the requirement that [the beneficiary] should have a Bachelor's degree in 'Commerce', it should be noted that such degrees are not given in the United States, and that in some countries a 'Bachelor of Commerce' can be in Economics." First, it is noted that the beneficiary's Bachelor of Commerce degree is not in Economics, but in "Advanced Accountancy, Auditing and Income Tax and Costing." Second, it is also noted that there is a difference between a Bachelor of Commerce, or B.Comm., degree (which is not available in the United States) and a bachelor's degree with a major field of study in commerce. As is discussed in detail below, both Part A of Form ETA 750 and the recruitment conducted during the labor certification process are consistent in stating that the offered position requires a bachelor's degree in commerce, not a Bachelor of Commerce degree. Unlike a Bachelor of Commerce degree, a bachelor's degree in commerce/business administration is generally available in the United States. If the labor certification or recruitment had required a Bachelor of Commerce degree, it could be concluded that the petitioner improperly structured the labor certification to exclude U.S. workers from consideration by requiring a degree that is not available to U.S. workers educated in the United

was evaluated by [REDACTED] to be equivalent to a U.S. bachelor's degree in economics, is in "exactly the same field" as the bachelor's degree in commerce required by the labor certification.

The record of proceeding on appeal contains the following documents pertaining to the beneficiary's educational qualifications:

- Master of Arts in economics diploma from Meerut University, India.
- Statement of marks from Meerut University.
- Evaluation of the beneficiary's Master of Arts in economics by [REDACTED] of Education International, Inc.
- Bachelor of Commerce diploma in "Advanced Accountancy, Auditing and Income Tax and Costing" from Calcutta University, India.
- Statement of marks, Parts I and II, from Calcutta University.
- Diploma from University of Calcutta for passage of the pre-university examination.

Given the issues described above pertaining to the beneficiary's educational credentials, the AAO reviewed the Electronic Database for Global Education (EDGE)⁷ created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO).⁸

EDGE provides a great deal of information about the educational system in India. Specifically, EDGE states that the beneficiary's three-year Bachelor of Commerce degree represents attainment of

States. However, this is not the case here. Finally, [REDACTED] evaluation is conclusory and does not provide a basis for its findings. Although, as is discussed below, the AAO concurs with [REDACTED] conclusion that the beneficiary's Master of Arts in economics from Meerut University, India is equivalent to a U.S. bachelor's degree in economics, the lack of support for [REDACTED] claims do not accord the evaluation great weight. U.S. Citizenship and Immigration Services (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. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

⁷ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision.

⁸ AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to its registration page, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

a level of education comparable to three years of university study in the United States.⁹ EDGE also discusses pre-university certificates. EDGE provides that a pre-university certificate represents attainment of a level of education comparable to completion of the senior high school in the United States.¹⁰ EDGE does not suggest that such a certificate, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. Finally, EDGE states that the beneficiary's Master of Arts degree represents attainment of a level of education comparable to a bachelor's degree in the United States.¹¹

Therefore, it is concluded that the beneficiary more likely than not has the foreign equivalent of a bachelor's degree in economics issued by an accredited U.S. college or university. However, the labor certification clearly states that the offered position requires a bachelor's degree in commerce, and the labor certification does not permit an individual to qualify for the offered position with a different field of study. Although the petitioner contends that the field of study of economics is the same as commerce, the evidence initially submitted on appeal contained no support for this claim. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

On September 15, 2009, the AAO issued an RFE to obtain evidence of the petitioner's intent concerning the actual minimum educational requirements of the position as that intent was explicitly and specifically expressed during the labor certification process. Specifically, the AAO requested that the petitioner provide the signed, detailed written report of its good faith efforts to recruit U.S. workers prior to filing the labor certification as required by the regulation at 20 C.F.R. § 656.21(b)(1) in effect at the time the labor certification was filed with the DOL.¹² This report includes the methods of recruitment, the number of U.S. workers responding to the recruitment, the number of interviews conducted with U.S. workers, the lawful job-related reasons for not hiring each U.S. worker who applied for the position, the wages and working conditions offered to the U.S. workers, and a copy of all advertisements used to recruit U.S. workers for the position. The RFE also requested copies of all resumes received in response to the recruitment. The evidence was requested to help establish the petitioner's intent regarding the minimum requirements of the job offered by demonstrating that U.S. workers without a bachelor's degree in commerce were in fact put on notice that they were

⁹ <http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=128> (last accessed January 11, 2011).

¹⁰ <http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=153> (last accessed January 11, 2011).

¹¹ <http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=140> (last accessed January 11, 2011).

¹² The current regulatory scheme governing the labor certification process went into effect on March 28, 2005. The new regulations are referred to by the DOL by the acronym PERM, for Program Electronic Review Management. See 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004). The instant labor certification was filed prior to March 28, 2005 and is therefore governed by the prior regulations.

eligible to apply for the position, and that the petitioner did not in fact exclude U.S. workers with qualifications similar to those of the beneficiary from applying for and filling the position.

In response to the RFE, the petitioner submitted copies of the print advertisements placed during the labor certification process and a copy of the notice of job opportunity (Notice) posted for 10 business days as required by DOL regulations. The petitioner's RFE response states that the petitioner did not receive any resumes in response to its recruitment efforts. Both the print advertisements for the offered position and the Notice state that the offered position requires a "Bachelor's degree in commerce." No permissible alternative field of study is stated in any of the materials prepared by the petitioner during the labor certification process.

On May 13, 2010, the AAO dismissed the appeal, concluding that the petitioner structured the labor certification to specify that only individuals who possessed a four-year bachelor's degree in the field of commerce (or a foreign equivalent degree) would qualify for the offered position. Neither the labor certification, the print advertisements nor the Notice permitted an individual to qualify for the position with a bachelor's degree in a different field of study. The AAO concurred with the director's conclusion that the beneficiary did not meet the minimum requirements for the offered position as set forth on the labor certification, and dismissed the appeal accordingly.

On September 28, 2010, the AAO *sua sponte* reopened the matter on motion pursuant to 8 C.F.R. § 103.5(a)(5)(ii). On October 25, 2010, current counsel submitted Petitioner's Memorandum in Support of Reconsideration of Denial of Employment-Based Petition (Reconsideration Memorandum). The Reconsideration Memorandum states that "[t]he field of economics is an indispensable part of the curriculum leading to a degree in commerce." In support of this claim, counsel cites to commerce programs in the United States that require completion of (or offer as part of the curriculum) economics courses. The Reconsideration Memorandum also contains a second credentials evaluation, dated July 8, 2010, prepared by the AACRAO Office of International Educational Services, Credentials Analysis Service. The evaluation concludes that the beneficiary's three-year Bachelor of Commerce degree and two-year Master of Arts degree are equivalent to a Bachelor of Arts degree in Economics from a regionally accredited college or university in the United States.

Before proceeding with a discussion of the petitioner's arguments in the Reconsideration Memorandum, it is useful at this time to discuss the roles and respective authority of the DOL and USCIS in the employment-based immigrant visa process; as well as to address the employment-based preference classification of the offered position.

The Role of the DOL and USCIS

As noted above, the Form ETA 750 in this matter is certified by the DOL. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by Federal Circuit Courts.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).¹³ *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

¹³ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)(14) of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

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

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

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

In summary, 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.

Classification as a Professional or a Skilled Worker

The offered position is not one of the occupations statutorily defined as a profession at section 101(a)(32) of the Act, which states: "The term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary

schools, colleges, academies, or seminaries." The list of professional occupations in the Act is not exclusive. USCIS may also determine that a position is professional based on the requirements of the occupation.

In the instant case, Part A of the Form ETA 750 indicates that the DOL assigned the offered position the Dictionary of Occupational Titles (DOT) occupational code of 050.067-010 and title of "Economist." The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL. The DOT has since been replaced by O*NET, the current DOL occupational classification system. Located online at <http://online.onetcenter.org>, O*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. *See* <http://www.bls.gov/soc/socguide.htm>.

The O*NET website contains a crosswalk that translates DOT codes into SOC codes. *See* <http://online.onetcenter.org/crosswalk/DOT>. In the instant case, the DOT position of Economist equates to the SOC code 19-3011.00 - Economists.¹⁴ The O*NET online database states that this occupation falls within Job Zone Five.

According to O*NET, most of the occupations in Job Zone Five require a graduate degree. *See* <http://online.onetcenter.org/help/online/zones>. The DOL assigns a standard vocational preparation (SVP) of 8 to Job Zone 5 occupations, which means that over four up to and including ten years of related education, training and/or experience are needed for Job Zone 5 occupations. *See* 20 C.F.R. § 656.3.

Because of the requirements of the offered position and the DOL's standard occupational requirements, the proffered position is properly classified as professional and not as a skilled worker position.

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,

¹⁴ Although not controlling in this case, it is instructive that the preamble to the DOL's PERM labor certification regulations classify "Economists" (19-3011) as a "professional" occupation for recruitment purposes. *See* 69 Fed. Reg. at 77378.

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.

For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien had a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.)

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

Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 1289m 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement in of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate degree, we would not consider education earned at an institution other than a college or university.

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent

degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

In the instant case, the offered position is for an economist and requires an individual with four years of college culminating in a bachelor's degree. Therefore, the offered position requires a professional. The beneficiary possesses a Master of Arts in economics from Meerut University, India. This degree has been determined to be the foreign equivalent of a U.S. bachelor's degree. The beneficiary possesses a single-source foreign equivalent degree to a U.S. bachelor's degree. Therefore, the beneficiary can be classified as a professional.

Whether the Beneficiary Meets the Educational Requirements of the Offered Position.

The petitioner must also establish the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 v. Smith*, 696 F.2d 1008; *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1st Cir. 1981).

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). 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.

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. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). Thus, 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.* at *7.¹⁵

¹⁵ In *Snapnames.com, Inc.*, 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

The minimum education, training, experience and skills required to perform the duties of the offered position is set forth at Part A of the labor certification, and are discussed in detail above. The labor certification, *as prepared by the petitioner and certified by the DOL*, states that the proffered position requires four years of college culminating in a bachelor's degree with a major field of study of commerce. The labor certification does not state that the educational requirements of the offered position could be met with a bachelor's degree in a different or related field of study. The recruitment conducted during the labor certification and the Notice all state that the position requires a bachelor's degree in commerce.¹⁶ The petitioner does not claim that it intended the labor certification to require a field of study other than commerce.

The beneficiary's Bachelor of Commerce in "Advanced Accountancy, Auditing and Income Tax and Costing" from Calcutta University, India is not equivalent to a U.S. bachelor's degree. The beneficiary's Master of Arts in economics from Meerut University, India is equivalent to a U.S. bachelor's degree in economics and is a single-source foreign equivalent degree. There is no evidence in the record that the beneficiary possesses a single-source foreign equivalent degree in commerce.

The AAO notes that the title of the offered position is "economist," that the DOL has classified the position as an "Economist," and that the beneficiary possesses a single-source foreign equivalent degree to a U.S. bachelor's degree in economics. However, for the reasons explained above, USCIS is bound by the language of the labor certification. The labor certification states that the offered position requires a bachelor's degree in commerce. There is no ambiguity or inconsistency in the stated requirements on the labor certification or in the requirements contained in the recruitment conducted during the labor certification process.

Therefore this decision hinges on counsel's claim on appeal that a bachelor's degree in economics is the same as a bachelor's degree in commerce. In support of this claim, counsel submits evidence that some commerce/business administration programs in the United States require or offer courses in economics, such as introductory microeconomics and macroeconomics courses.

Economics is a social science. It is defined as "the science of treating the production, distribution, and consumption of goods and services." Webster's New Universal Unabridged Dictionary (1986).

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 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.

¹⁶ It is noted that a U.S. worker with a bachelor's degree in economics would have been discouraged from applying for the position based on the educational requirements stated in the print advertisements.

Or, more simply, it is "the social science that studies how people make decisions when faced with scarce resources." http://www.stlouisfed.org/education_resources/assets/pdf/Suiter_SSYL.pdf.

The field of commerce is synonymous with the field of business administration/management. Such a degree:

[P]repares individuals to plan, organize, direct, and control the functions and processes of a firm or organization. Includes instruction in management theory, human resources management and behavior, accounting and other quantitative methods, purchasing and logistics, organization and production, marketing, and business decision-making

<http://nces.ed.gov/ipeds/cipcode/cipdetail.aspx?y=55&cipid=88877>. The Princeton Review lists the top 10 majors in the United States. The list states that business administration and management/commerce is the most popular major, and that economics is ranked seventh. *See* <http://www.princetonreview.com/college/top-ten-majors.aspx> (last accessed January 12, 2011).

Economics is a social science and is generally located in a college of arts and sciences, whereas commerce/business administration is generally located in a school of commerce/business administration. For example, according to the University of Washington Department of Economics, economics "is the study of how resources are used by society to satisfy human wants," while "business administration is the study of methods for improving the profitability of an individual business enterprise." *See*

http://www.econ.washington.edu/instruction/undergrad/degrees_offered.html (last accessed January 12, 2011). Although the "tools of economics analysis are used in business administration courses and students applying to the undergraduate business major are required to take introductory economics courses," if a student "decides to pursue majors in both economics and business administration, the University of Washington designates this as a double degree, which requires completion of 225 credits." *Id.* Even in universities that have business and economics in the same school, the two fields of study are separate and have significantly different requirements. *See e.g.*, <http://gatton.uky.edu/Content.asp?PageName=DegreePrograms>.

The AAO does not dispute that there is some overlap between the two fields of study, and, as the petitioner asserts in the Reconsideration Memorandum, commerce/business administration programs may require or offer courses in economics. However, the fact remains that economics and commerce are two separate fields of study, and the record is devoid of evidence to the contrary.

The evidence in the record is not sufficient to establish that commerce and economics are the same field of study. Therefore, the AAO must conclude that the beneficiary does not meet the minimum requirements of the job offered, as those requirements are unambiguously stated on the labor certification prepared by the petitioner and certified by the DOL.¹⁷ To find otherwise would

¹⁷ 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

undermine the well-established role of USCIS to determine whether the beneficiary qualifies for the offered position set forth on the labor certification.

In conclusion, the petitioner specified on the approved labor certification form that it sought to fill a job opportunity where the specified, minimum educational requirement was a "bachelor's degree" in "commerce." The petitioner's recruitment documents also evidence its intent to require a bachelor's degree in "commerce." But the alien beneficiary holds the equivalent of a U.S. bachelor's degree in "economics." Thus, the petitioner has not established that the alien beneficiary possesses the educational qualifications required to fill the "professional" job opportunity at issue. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C).

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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.

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. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church*, 437 F. Supp. 2d at 1179 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws and not with the delivery of mail. *See* section 103(a) of the Act, 8 U.S.C. § 1103(a). Further, the instant case does not involve the USCIS interpreting a purportedly ambiguous term like "or equivalent." The educational requirements of the offered position stated on the labor certification are clearly and unambiguously stated.