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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
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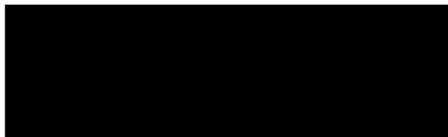
JUL 27 2011

IN RE: Petitioner:
Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a cable TV Broadcasting company. It seeks to employ the beneficiary permanently in the United States as an assignment editor. As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification approved by the United States Department of Labor (USDOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). 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), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The priority date of the petition is July 9, 2003, which is the date the labor certification was accepted for processing by the USDOL. *See* 8 C.F.R. § 204.5(d).² The Form I-140, Immigrant Petition for Alien Worker, was filed on November 6, 2006.

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

Supervise and coordinate activities for TV news gathering staff for Korean language cable TV broadcasting station. Maintain contact with outside news agencies. Coordinate and work with General Manager to determine priorities and assign

¹ After March 28, 2005, the correct form to apply for labor certification is the ETA Form 9089. *See* 69 Fed. Reg. 77325, 77326 (Dec. 27, 2004).

² 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.

coverage to news units, originate/approve ideas for news stories, and participate in editing/writing.

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

Block 14:

Education (number of years)

Grade school	Blank
High school	Blank
College	4
College Degree Required	B.A.
Major Field of Study	Television Broadcasting

Experience:

Job Offered	2
(or)	
Related Occupation	2
Related Occupation	Editor in Charge or Chief Reporter

Block 15:

Other Special Requirements None listed

On Part B of the labor certification, signed by the beneficiary, he listed his prior education as a certificate from Seoul Institute of the Arts in Seoul, Korea, for his study in the Department of Film from March 1975 to February 1980. The Form ETA 750B also reflects the beneficiary's experience as a [REDACTED] from February 2002 until June 23, 2003, the day the beneficiary signed the Form ETA 750B.

In support of the beneficiary's educational qualifications, the record contains a copy of his certificate dated August 10, 2001 from the Director of Academic Affairs and transcript from the Seoul Institute of the Arts showing that he graduated from the Department of Film on February 12, 1980 after four semesters of study. The record contains two evaluations of the beneficiary's credentials prepared by [REDACTED] in Bothell, Washington, dated November 27, 2001 and by [REDACTED] of the same organization in Lynnwood, Washington, dated November 27, 2007. The evaluations conclude that the beneficiary's degree from Seoul Institute of the Arts (a.k.a. Seoul Junior College of Arts) in Seoul, Korea, is equivalent to an associate's degree (two years) in film production from an accredited community college in the United States. [REDACTED] cites an opinion by [REDACTED] of the University of California, Santa Cruz, and then concludes the beneficiary has an educational and professional background which, when considered together, is equivalent to that of an individual with a bachelor's degree in

television broadcasting from a regionally accredited college or university in the United States.

The record also contains an evaluation of the beneficiary's credentials by [REDACTED] of the Film and Media Department of the [REDACTED] who concludes that the beneficiary's two-year educational program at the Film Department of the Seoul Institute of the Arts is equivalent to two years of university-level credit (an associate degree) in film production or in television broadcasting. He further states that the beneficiary's 20-year journalistic career with the Korean Broadcasting System is clearly a professional equivalent to at least an additional two years of undergraduate study, and that based on this combination, the beneficiary has attained the equivalent to a Bachelor of Arts degree in Television Broadcasting or in a related area.³

The director denied the petition on April 11, 2008. The director determined that the beneficiary did not meet the educational requirements specified on the labor certification as of the petition's priority date. As the Form ETA 750 requires a four-year bachelor's degree, the director concluded that the

³ On May 20, 2011, the AAO issued a Request for Evidence and Notice of Derogatory Information (RFE/NDI) noting that the AAO had reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) in considering whether the beneficiary's foreign education is a foreign equivalent degree to a U.S. bachelor's degree. According to its website, www.aacrao.org, 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 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. In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

The AAO noted that EDGE did not suggest that the beneficiary's credential from Korea is a foreign equivalent degree to a U.S. bachelor's degree.

In response, the petitioner generally admits that the beneficiary's foreign education is not equivalent to a U.S. bachelor's degree. Instead, counsel argues that a combination of the beneficiary's education and work experience is "equivalent" to a bachelor's degree and the labor certification in this case can be construed to permit workers with such a credential to be qualified for the position.

beneficiary did not meet this requirement because he has not earned a bachelor's degree or a foreign equivalent degree. Instead, the beneficiary has allegedly earned the equivalent to a bachelor's degree through a combination of education and experience, which is not permitted by the labor certification.

On appeal, counsel states that the beneficiary possessed all of the required education, training, and experience as of the priority date. Counsel argues that a review of the Form ETA 750 makes clear that it is not a requirement of the job that the applicant must have a United States bachelor's degree or a foreign degree equivalent as the application is clear that experience equivalent to a bachelor's degree is adequate for the job. Counsel's reading of the labor certification ignores the plain language of Block 14 of the Form ETA 750 which states a four-year college degree in television broadcasting is the education required for the offered position. It is noted that the assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988).

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

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

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

The regulation at 8 C.F.R. 204(5)(l)(3)(ii)(B) states the following:

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 individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The above regulation requires that the alien meet the requirements of the labor certification.

On appeal, previous counsel argued that the petitioner had submitted the Form I-140 for a skilled worker and not for a professional worker position. However, because the petition's proffered position qualifies for consideration under both the professional and skilled worker categories, the AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional category.

On appeal, counsel submits a letter dated May 8, 2008 from [REDACTED] who states, in part:

I am surprised to learn that the basis for denying the I-140 petition is that the USCIS interprets the offered position to be one for a third-preference professional, when the beneficiary did not hold a U.S. bachelor's degree. In processing this application, our office [the Washington State Employment Security Department] treated this labor certification application as one for a skilled worker who either held a bachelors degree (from an American or foreign college or university) or who had its functional equivalent in the form of experience or from a combination of education and experience. The foreign worker (they have 20 years of experience in the broadcasting field) appeared to meet the qualifications and requirements of the employer, i.e. a Bachelors Degree or its equivalent using the formula of three years of experience being equal to one year of college. I would not have proceeded any further without that knowledge and understanding.

Although the ETA-750 does not explicitly state that the petitioner would accept three years of relevant experience in lieu of one year of college, the materials submitted in support of the labor certification application make it quite clear that this is the standard that the employer used to recruit qualified workers for the offered position. This office never considers an applicant for labor certification by reviewing the ETA-750 standing alone, but always considers the supplemental information contained in the attached materials in deciding whether labor certification can be approved. It was obvious from the petitioner's ETA-750 and the supporting materials that the beneficiary did not qualify for the offered position based solely on holding a degree, because he held neither a U.S. nor equivalent foreign bachelors degree. Had he not qualified using the three-for-one standard set out in the materials submitted by the petitioner, the ETA-750 could not have been certified, because the beneficiary [REDACTED] obviously does not hold a U.S. or foreign bachelor's degree,

This application was transferred to the USDOL Dallas Regional Office on February 4, 2005 for further processing. It was approved on May 19, 2006, by the USDOL Certifying Officer at the USDOL Dallas Regional Office using the logic listed above.

In his letter, [REDACTED] is of the opinion that the beneficiary qualifies for the proffered position based on a rule equating three years of experience for one year of education. However, that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by USDOL which was not accomplished. It also appears, as explained

infra, that the petitioner's recruitment efforts were contrary to its claims on appeal, restricted to workers having bachelor's degrees. This confirms the petitioner's intent, as expressed in the Form ETA 750, to intend the minimum educational requirement to be a bachelor's degree.

It is useful to provide an explanation of the general process of procuring an employment-based immigrant visa and the roles and respective authority of both agencies involved.

As noted above, the Form ETA 750 in this matter is certified by the USDOL. Thus, at the outset, we will discuss the USDOL's role in this process. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General 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 USDOL 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).⁴ *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

⁴ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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 USDOL that stated the following:

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

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

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

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

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

Therefore, it is the USDOL’s responsibility to certify the terms of the labor certification, but it is the responsibility of United States Citizenship and Immigration Services (USCIS) to determine if the petition and the alien beneficiary are eligible for the classification sought. For classification as a

member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien 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.

The petitioner in this matter relies on the beneficiary’s combined education and work experience to reach the “equivalent” of a degree, which is not a bachelor’s degree based on a single degree in the required field listed on the certified labor certification.

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 or a two-year associate’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.

Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree,” from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required for the equivalent of a bachelor’s degree.

As noted by counsel, we are cognizant of the recent 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 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).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The district court determined that ‘B.S. or foreign equivalent’ relates solely to the alien’s educational background, precluding consideration of the alien’s combined education and work experience. *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. 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 Form ETA 750 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 this matter, the Form ETA 750 does not specify an equivalency to the requirement of a four-year bachelor’s degree.

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

Further, the employer’s subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 14 n. 7. Thus, USCIS agrees that the best evidence of the petitioner’s intent concerning the actual minimum educational requirements of the proffered position is evidence of how it expressed those requirements to the USDOL during the labor certification process and not afterwards to USCIS. The timing of such evidence is needed to ensure inflation of those requirements is not occurring in an effort to fit the beneficiary’s credentials into requirements that do not seem on their face to include what the beneficiary has.

In this matter, counsel argues that the petitioner’s correspondence between it and the Employment Security Department of the State of Washington confirms that it intended the minimum educational requirement for the position to be a bachelor’s degree or “the experiential equivalent of such a degree.” However, as noted *supra*, the petitioner never caused the unambiguous terms of the Form ETA 750 as approved by the USDOL to include any requirement other than a four-year bachelor’s degree. Crucially, the actual recruitment materials in the record confirm that the petitioner intended the minimum requirement for the position to be a bachelor’s degree. The record contains copies of newspaper advertisements and a job posting notice which clearly state that a bachelor of arts degree is the minimum requirement. The recruitment materials are wholly silent on an “experiential equivalent” or any alternative combination of education and experience deemed “equivalent” to a U.S. bachelor’s degree or foreign equivalent degree. It is clear that U.S. workers without bachelor’s degree were apprised that they did not qualify for the position. Accordingly, as the petitioner’s intent as manifested through its actual recruitment materials confirm that it really did intend the minimum education requirement to be exactly that as unambiguously expressed in the Form ETA 750 – a four-year bachelor’s degree – the petition was properly denied because the beneficiary has never earned such a degree.

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 job. USCIS will not accept a degree equivalency or an unrelated degree when a 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).

The evidence in the record is not sufficient to establish that the beneficiary possesses a U.S. bachelor's degree or a foreign equivalent degree as required by the terms of the labor certification.

The Form ETA 750 does not provide that the minimum academic requirements might be met through some other formula other than that explicitly stated on the Form ETA 750. The copies of the newspaper advertisements for the proffered position provided by the petitioner for the record failed to advise the USDOL or any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency. Thus, the alien does not qualify as a skilled worker as he does not meet the terms of the labor certification as explicitly expressed or as extrapolated from the evidence of its intent about those requirements during the labor certification process.

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and fails to meet the requirements of the labor certification, and, thus, does not qualify for preference visa classification under section 203(b)(3) 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.