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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:

MAR 04 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, Texas 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 hospitality company. It seeks to employ the beneficiary permanently in the United States as an Area operations Manager. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (the DOL), 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. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

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 February 8, 2007, which is the date the labor certification was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).² The Immigrant Petition for Alien Worker (Form I-140) was filed on October 2, 2007.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and

¹ 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).

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.

conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

On the ETA Form 9089, the "job offer" position description for an Area Operations Manager provides, in part:

Direct and manage operations of two or more hotels to assure optimum performance and continual improvement in the five Key Result Areas, such as guest service, employee management, sales and marketing, property appearance and profit/financial control.

The minimum level of education and experience required for the proffered position is listed in Part H of the ETA Form 9089. The petitioner indicated in Part H, Item 4 that the minimum level of education required for the position is "other." In Part H, Item 4-A, the petitioner elaborated on the education requirement as follows: "will accept acad. studies evaluated as equiv. of US Bachelors." Part H, Item 4-B states that the required major field of study is "Hotel and Restaurant Management or related." Part H, Item 7 indicates that the petitioner will not accept an alternate field of study. Part H, Item 8 indicates that an alternate combination of education and experience is not acceptable. Part H, Item 9 indicates that a foreign educational equivalent is acceptable.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (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 v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

As set forth above, the proffered position requires academic studies which are evaluated as the equivalent of a U.S. bachelor's degree in hotel and restaurant management or a related field.

On the ETA Form 9089, signed by the beneficiary, the beneficiary represented that the highest level of achieved education related to the requested occupation was "other." He listed the institutions of study

where that education was obtained as the University of Mumbai and the Institute of Hotel Management, Catering and Applied Nutrition, and the year completed as 2001.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma in Hotel Management & Catering Technology from the National Council for Hotel Management and Catering Technology. The petitioner also submitted copies of the beneficiary's transcripts from the Institute of Hotel Management, Catering Technology & Applied Nutrition. The petitioner also submitted a copy of the beneficiary's transcript from the University of Mumbai, showing that the beneficiary completed one year of studies toward a three-year Bachelor of Commerce degree. The petitioner also submitted an evaluation of the beneficiary's education prepared by [REDACTED] of U.S. Evaluations. The evaluation concludes that the combination of the beneficiary's studies at the University of Mumbai and diploma from the Institute of Hotel Management, Catering and Applied Nutrition is the equivalent of a Bachelor of Science Degree in Hotel and Restaurant Management from an accredited institution of higher education in the United States.

The director denied the petition on April 8, 2009. He determined that the beneficiary did not possess a Bachelor's degree or foreign equivalent degree.

On appeal, counsel states that the director erred failing to consider the petition under the skilled worker category. Counsel states that the beneficiary met the requirements for classification as a skilled worker and met the requirements for the proffered position as stated on the ETA Form 9089.

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."

Part F of the ETA Form 9089 indicates that the DOL assigned the occupational code of 11-1021.00 and title General and Operations Managers, to the proffered position. The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the applicable occupational classification code is noted on the labor certification form. O*NET is the current occupational classification system used by the DOL. 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.³

In the instant case, the DOL categorized the offered position under the SOC code 11-1021.00. The O*NET online database states that this occupation falls within Job Zone Three.⁴

³See <http://www.bls.gov/soc/socguide.htm>.

⁴According to O*NET, most of the occupations in Job Zone Three require training in vocational

According to the DOL, one or two years of training involving both on-the-job experience and informal training with experienced workers are needed for Job Zone 3 occupations. The DOL assigns a standard vocational preparation (SVP) of 6 to Job Zone 3 occupations, which means “[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree. Some may require a bachelor's degree.” See <http://online.onetcenter.org/link/summary/11-1021.00> (accessed March 3, 2011). Additionally, the DOL states the following concerning the training and overall experience required for Job Zone 3 occupations:

Previous work-related skill, knowledge, or experience is required for these occupations. For example, an electrician must have completed three or four years of apprenticeship or several years of vocational training, and often must have passed a licensing exam, in order to perform the job.

See id. Because of the requirements of the proffered position and the DOL’s standard occupational requirements, the proffered position is for a skilled worker, but might also be considered under the professional category.

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

schools, related on-the-job experience, or an associate's degree.
<http://online.onetcenter.org/help/online/zones> (accessed September 22, 2010).

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.

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.

Initially, however, we will 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 ETA Form 9089 in this matter is certified by the DOL. Thus, at the outset, it is useful to discuss the DOL'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 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).⁵ *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.

* * *

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

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 at 1012-1013.

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 at 1008. 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).

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

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. 1289, 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 a combination of the beneficiary's studies at the University of Mumbai and diploma in Hotel Management and Catering Technology from the National Council of Hotel Management and Catering Technology, 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 will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

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.

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).

The beneficiary also does not qualify as a skilled worker under section 203(b)(3)(A)(i) of the Act because he does not meet the job requirements of the labor certification.

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.

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 DOL 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.

On April 14, 2010, the AAO issued a request for evidence (RFE) to the petitioner, seeking additional evidence with respect to (1) the petitioner's intent concerning the actual minimum requirements of the proffered position, (2) whether or not the beneficiary's education was the equivalent of a U.S. bachelor's degree and (3) whether or not the beneficiary possessed the required skills listed of the ETA Form 9089 as of the priority date. In response, counsel submitted a brief, copies of advertisements and the Notice of Filing posted by the petitioner, a copy of the prevailing wage request submitted by the petitioner, a copy of the petitioner's recruitment report, an updated evaluation of the beneficiary's education, a transcript showing courses completed by the beneficiary at the International College of Hospitality Management, and letters attesting to the beneficiary's experience.

The Notice of Filing describes the educational requirement for the proffered position as follows: "Bachelor's degree in Hotel and Restaurant Management or related field. Employer will accept a combination of academic studies evaluated as the equivalent of a Bachelor's degree in Hotel and Restaurant Management or related field." The other postings and the prevailing wage request submitted in response to the RFE similarly describe the educational requirement for the proffered position. There is no indication that the petitioner was willing to accept anything less than a full bachelor's degree or equivalent combination of studies.

As noted above, in support of the petition, the petitioner submitted a credentials evaluation from Binyamin Rasnick of U.S. Evaluations. The evaluation concludes that the combination of the beneficiary's studies at the University of Mumbai and diploma from the Institute of Hotel Management, Catering and Applied Nutrition, is the equivalent of a Bachelor of Science Degree in Hotel and Restaurant Management from an accredited institution of higher education in the United States.

The evaluation by Mr. Rasnick is insufficient to establish that the beneficiary's education is the equivalent of a U.S. bachelor's degree. As noted in the RFE issued by this office, the evaluation does not clearly explain the evaluator's methodology in reaching the conclusion that the beneficiary's academic credentials are the equivalent of a United States bachelor's degree. Specifically, the evaluation refers to "credit hours" required of students at the University of Mumbai

and the Institute of Hotel Management, Catering and Applied Nutrition, however the beneficiary's transcripts from these institutions do not specify the number of credit hours for each course. Therefore, this office requested a more detailed evaluation of the beneficiary's academic credentials.

In response, counsel submitted an evaluation prepared by [REDACTED] on May 3, 2010. This evaluation similarly concludes that the combination of the beneficiary's studies at the University of Mumbai and diploma from the Institute of Hotel Management, Catering and Applied Nutrition, is the equivalent of a Bachelor of Science Degree in Hotel Management from an accredited institution of higher education in the United States.

The evaluation by [REDACTED] assigns a certain number of credits to each course completed by the beneficiary at the University of Mumbai and the Institute of Hotel Management, Catering and Applied Nutrition. The total credits completed by the beneficiary, according to [REDACTED] evaluation, was 120.25. However, it is not clear how [REDACTED] assigned credits to each course and, in fact, seems to have been inconsistent in assigning credits. For example, the beneficiary's transcript from the Institute of Hotel Management, Catering and Applied Nutrition shows that the beneficiary took a "Food Production" course which consisted of two hours of "Theory" and eight hours of "Practicals" per week. [REDACTED] found this course to be equivalent to 4.75 U.S. credits. However, [REDACTED] also found the course "Food & Beverage Service" to be equivalent to 4.75 U.S. credits, even though the course consisted of only two hours of "Theory" and four hours of "Practicals" per week. Similarly, [REDACTED] found the course "Accommodation Operations," consisting of two hours of Theory and two hours of Practical per week, to be equivalent to 3.75 U.S. credits. However, the course "Front Office Operations," consisting of one hour of theory and two hours of practicals per week, was also found to be equivalent of 3.75 U.S. credits. In the RFE, this office stated that it was unclear how the evaluator reached his conclusion regarding the beneficiary's education. Although counsel has submitted a new evaluation, it remains unclear how this evaluator reached his conclusions.

In addition, the evaluation by [REDACTED] appears to conflict with other evidence submitted by counsel. Specifically, counsel has submitted an official grade report from the International College of Hospitality and Management, [REDACTED]. The beneficiary completed courses at the International College of Hospitality and Management, [REDACTED], in the summer and fall of 2001. According to the Official Grade Report, the beneficiary was awarded 36 transfer credits for the courses he had completed at the Institute of Hotel Management, Catering and Applied Nutrition. This detracts from [REDACTED] claim that the beneficiary completed the equivalent of 90.50 U.S. credits at the Institute of Hotel Management, Catering and Applied Nutrition.

Counsel states that "[i]n the event that the Service does not agree with this equivalency evaluation, we submit that the evaluator's manner in coming to this conclusion does not necessarily have to coincide with the Service's standards in defining bachelor's equivalencies because Professional Worker classification is not sought." However, the issue here is not only whether the beneficiary possesses a U.S. bachelor's degree or foreign equivalent degree, as is required for professional classification. Instead, at issue is whether the beneficiary met the requirements stated on the labor certification as of the priority date, as required by 8 C.F.R. §204(5)(1)(3)(ii)(B) and the skilled

worker classification. That requirement, as stated above and in the ETA Form 9089, is academic studies which have been evaluated as the equivalent of a U.S. bachelor's degree.

The petitioner bears the burden of proof in establishing that the beneficiary is eligible for the classification sought. That is, the petitioner must establish, by a preponderance of the evidence, that the beneficiary possessed the equivalent of a U.S. bachelor's degree, as required by the ETA Form 9089, as of the priority date. As explained above, the petitioner has failed to do so. The evaluation initially submitted by the petitioner was unclear in reaching its conclusion. The evaluation submitted in response to the RFE issued by this office was internally inconsistent and inconsistent with other evidence in the record. Therefore, the evidence in the record does not establish that, as of the priority date, the beneficiary possessed education which was equivalent to a U.S. bachelor's degree.

Although counsel has not identified the methodology to be used to determine whether the beneficiary has earned the equivalent to a U.S. bachelor's degree, it is also noted that the record does not establish that the evaluations in the record comply the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) which states:

(D) Equivalence to completion of a college degree. For purposes of paragraph (h)(4)(iii)(C)(4) of this section, equivalence to completion of a United States baccalaureate or higher degree shall mean achievement of a level of knowledge, competence, and practice in the specialty occupation that has been determined to be equal to that of an individual who has a baccalaureate or higher degree in the specialty and shall be determined by one or more of the following:

(1) An evaluation from an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university which has a program for granting such credit based on an individual's training and/or work experience;

(2) The results of recognized college-level equivalency examinations or special credit programs, such as the College Level Examination Program (CLEP), or Program on Noncollegiate Sponsored Instruction (PONSI);

(3) An evaluation of education by a reliable credentials evaluation service which specializes in evaluating foreign educational credentials;

(4) Evidence of certification or registration from a nationally-recognized professional association or society for the specialty that is known to grant certification or registration to persons in the occupational specialty who have achieved a certain level of competence in the specialty;

(5) A determination by the Service that the equivalent of the degree required by the specialty occupation has been acquired through a combination of

education, specialized training, and/or work experience in areas related to the specialty and that the alien has achieved recognition of expertise in the specialty occupation as a result of such training and experience. For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks. For equivalence to an advanced (or Masters) degree, the alien must have a baccalaureate degree followed by at least five years of experience in the specialty. If required by a specialty, the alien must hold a Doctorate degree or its foreign equivalent. It must be clearly demonstrated that the alien's training and/or work experience included the theoretical and practical application of specialized knowledge required by the specialty occupation; that the alien's experience was gained while working with peers, supervisors, or subordinates who have a degree or its equivalent in the specialty occupation; and that the alien has recognition of expertise in the specialty evidenced by at least one type of documentation such as:

- (i) Recognition of expertise in the specialty occupation by at least two recognized authorities in the same specialty occupation;
- (ii) Membership in a recognized foreign or United States association or society in the specialty occupation;
- (iii) Published material by or about the alien in professional publications, trade journals, books, or major newspapers;
- (iv) Licensure or registration to practice the specialty occupation in a foreign country; or
- (v) Achievements which a recognized authority has determined to be significant contributions to the field of the specialty occupation.

The evaluations do not comply with 8 C.F.R. § 214.2(h)(4)(iii)(D)(1) as there is no evidence that either evaluator is an official who has authority to grant college-level credit for training and/or experience in the specialty at an accredited college or university. The evaluations do not comply with 8 C.F.R. § 214.2(h)(4)(iii)(D)(2) because the evaluations are not the result of a recognized college-level equivalency examination. The evaluations do not comply with 8 C.F.R. § 214.2(h)(4)(iii)(D)(3) because the petitioner has not established that either U.S. Evaluations or Park Evaluations & Translations is a reliable credentials evaluation service which specializes in evaluating foreign educational credentials. The evaluations do not comply with 8 C.F.R. § 214.2(h)(4)(iii)(D)(4) because the evaluations are not certifications or registrations from a nationally-recognized professional association or society for the specialty. Finally, the evaluations do not comply with 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) because, as explained above, they fail to establish that the beneficiary's education is equivalent to a U.S. bachelor's degree in Hotel and

Restaurant Management or a related field.

Thus, even if the petitioner were to claim that the evaluations in the record comply with 8 C.F.R. § 214.2(h)(4)(iii)(D) and this is the methodology being mandated by terms of the certified ETA Form 9089, this office would find that the record fails to establish this.

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.