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



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



B6

DATE: **AUG 14 2012**

OFFICE: TEXAS SERVICE CENTER

FILE:

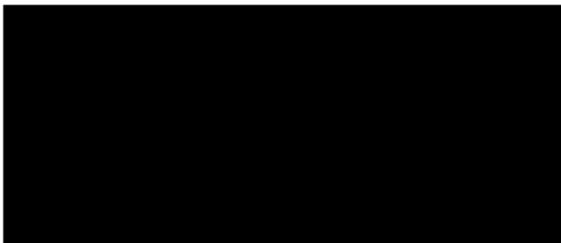


IN RE: Petitioner:
 Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you.

Elizabeth McCormack

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a carrier service. It seeks to permanently employ the beneficiary in the United States as a senior systems analyst. 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).

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is April 11, 2003. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess a U.S. bachelor's degree or foreign equivalent as required by the terms of the labor certification. On May 21, 2012, the AAO sent a Request for Evidence (RFE) to the petitioner concerning this issue.¹

The record shows that the appeal is properly filed and 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 conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

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

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

¹ The RFE also requested documentation to demonstrate the petitioner's ability to pay the proffered wage onward. The evidence submitted in response to the RFE documents the petitioner's ability to pay the proffered wage from 2003 to 2011. This issue will not be discussed further in this decision.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 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).

- (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 regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).³ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

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

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

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

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

§ 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).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and beneficiary are eligible for the requested employment-based immigrant visa classification.

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

⁴ Employment-based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. The petitioner indicates the requested classification by checking a box on the Form I-140.

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

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

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

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

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

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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

The Form I-140 version in effect when this petition was filed did not have separate boxes for the professional and skilled worker classifications. In the instant case, the petitioner selected Part 2, Box e of Form I-140 for a professional or skilled worker. The petitioner did not specify elsewhere in the record of proceeding prior to appeal whether the petition should be considered under the skilled worker or professional classification. After reviewing the minimum requirements of the offered position set forth on the labor certification and the standard requirements of the occupational classification assigned to the offered position by the DOL, the AAO will consider the petition under both the professional and skilled worker categories.

It is noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional. In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991) (emphasis added).

It is significant that both section 203(b)(3)(A)(ii) of the Act and the relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that 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' requirement of a single "degree" for members of the professions is deliberate.

The regulation also requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." 8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). In another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) of the Act (relating to aliens of exceptional ability). However, for the professional category, it is clear that the degree must be from a college or university.

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree).

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

In the instant case, the labor certification states that the beneficiary possesses a Bachelor of Commerce from Bharathiyar University, India, completed in 1988 and a Certificate in ERP-Oracle Applications from Data Software Research Co. International, India in 1998.

The record contains a copy of the beneficiary's Bachelor of Commerce diploma and transcripts from Bharathiyar University, India, issued in 1988. In response to the AAO's Request for Evidence, the petitioner also submitted the beneficiary's Associate membership certificate for the Institute of Chartered Accountants of India. The record also contains the following Certificates:

- Certificate of Achievement for completing the course on Oracle Payables, June 11, 1998 to June 15, 1998;
- Certificate of Achievement for completing the course on Oracle Receivables, June 16, 1998 to June 19, 1998;
- Certificate of Achievement for completing the course on Oracle Assets, June 20, 1998 to June 24, 1998;
- Certificate of Achievement for completing the course on Oracle General Ledger, June 25, 1998 to June 28, 1998;
- Certificate of Achievement for completing the course on System Administration & Application Object Library, July 26, 1999 to July 31, 1999;
- Certificate of Participation for the class on ORACLE 8 with Dev.2000-Diploma in RDBMS, July 1999.

The record also contains several evaluations of the beneficiary's credentials from [REDACTED] for Career Consulting International on July 14, 2007, [REDACTED] for Marquess Educational Consultants Ltd on July 14, 2007, and [REDACTED] of European-American University⁷ on July 16, 2007 that all conclude that the beneficiary's Bachelor of Commerce degree from Bharathiyar University is equivalent to a Bachelor of Science with a concentration in Computer Science from a

⁵ [REDACTED] indicates he has a Doctor of Divinity but does not indicate the school where he obtained this degree. In response to the AAO's RFE, Dr. [REDACTED] stated that he holds a Doctor of Education in Postsecondary Education from the Universidad Internacional, Panama and a Ph.D. in Humanities from the Universidad Empresarial de Costa Rica. The website for Universidad Internacional indicates that no Education post-graduate programs are available, see <http://www.internationaluniversity.edu/postgradados.htm> (accessed July 13, 2012), and the website for Universidad Empresarial states that credit may be awarded through means other than classroom study. See <http://www.unem.edu.pl/credit.html> (accessed July 13, 2012).

Furthermore, the petitioner submitted a letter from Professor [REDACTED] at the European-American University, stating that Dr. [REDACTED] has the power to grant credit based on experience for incoming students up to 60% of the degree requirement.

⁶ Dr. [REDACTED] indicates he has a canonical diploma of Sacrae Theologiae Professor, equivalent to a Doctorate of Divinity, from St. David's Oecumenical Institute of Divinity. The only reference to this institution we were able to locate on the Internet is a reference to its founding in 1985 on the website <http://www.liberalcatholics.org/education.html>. The same website has a section dedicated to the European-American University.

⁷ According to this "university's" website, www.thedegree.org/apel.html (accessed April 18, 2012), it awards degrees based on experience.

U.S. accredited institution of higher learning. In conjunction with a previously filed Form I-140, the petitioner submitted an evaluation from Pai-chun Ma of the Zicklin School of Business at The City University of New York, which stated that the beneficiary's Bachelor of Commerce degree and passage of the final exam for the Institute of Chartered Accountants of India is equivalent to a "Bachelor-level Degree in Accounting" from a U.S. institution.

Dr. [REDACTED] does not examine the beneficiary's specific coursework, but instead states generally that the beneficiary completed general and specialized studies leading to his degree. Dr. [REDACTED] concludes that academic instruction in India "is more intense than in the United States" and concludes that the "contact hours" of the beneficiary are equivalent to 120 semester credit hours at a U.S. institution.

The fundamental argument of Drs. [REDACTED] and Danzig's evaluations is that a three-year bachelor's degree from India is equivalent to a 120 credit hour U.S. bachelor's degree, because an Indian three-year degree requires the same number of classroom hours (or "contact hours") as a U.S. bachelor's degree. The evaluations claim that a student must attend at least 15 50-minute classroom hours to earn one semester credit hour under the U.S. system. Since U.S. bachelor's degree programs require 120 credit hours for graduation, the evaluations conclude that a program of study with 1800 classroom hours is equivalent to a U.S. bachelor's degree. They conclude that since a three-year bachelor's degree from India requires over 1800 classroom hours, the beneficiary's degree is equivalent to a U.S. bachelor's degree.

The evaluations base this equivalency formula on the claim that the U.S. semester credit hour is a variant of the "Carnegie Unit." Ultimately, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees.⁸ The petitioner has not demonstrated that the use of this system produces consistent results, as would be expected of a workable system.⁹

⁸ The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject. For example, 120 hours of classroom time was determined to be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school. This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class. The Carnegie Unit does not apply to higher education. See <http://www.carnegiefoundation.org/about-us/about-carnegie> (accessed April 18, 2012).

⁹ The petitioner also submitted a copy of the "Protecting Academic Freedom in Higher Education Act," a bill that passed in the U.S. House of Representatives, but has not been passed by the U.S. Senate. Counsel notes that a provision of this proposed law seeks to use the Carnegie Unit as a basis for U.S. institutions of higher education in determining the number of credits taken by a student for scholarship purposes. As this law has not been enacted, it is unclear as to how such a proposal would modify the evaluation or use of Carnegie Units in higher education.

The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. [REDACTED] The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf, accessed April 18, 2012 and incorporated into the record of proceedings, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

Finally, Dr. [REDACTED] relies on a UNESCO document. The relevant language relates to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

'Recognition' of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State and deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification."

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The AAO reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." See <http://edge.aacrao.org/info.php>. 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.¹⁰ 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.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.¹¹

According to EDGE, associate membership in the Institute of Chartered Accountants of India is equivalent to a U.S. Bachelor's degree (in accounting). The beneficiary has thus been shown to have the equivalent of a U.S. bachelor's degree in accounting. However, the labor certification requires a U.S. bachelor's degree in Computer Science and not in Accounting or Business.

In response to the AAO's Request for Evidence (RFE), the petitioner submitted a second evaluation dated June 27, 2012 from [REDACTED], which again concludes that the beneficiary holds the equivalent of a Bachelor of Science degree from a U.S. institution. Although Ms. [REDACTED] classifies this second evaluation as a "Course-by-Course Evaluation Report," the evaluation does not discuss the classes taken by the beneficiary or any other information specific to the beneficiary. Instead, the report again states that an Indian three-year bachelor degree is equivalent to a four-year U.S. bachelor's degree. Ms. [REDACTED] specifically cites Mr. [REDACTED] evaluation and the evidence cited

¹⁰ See *An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

¹¹ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

therein, and discussed above. The evaluation further states that some foreign three-year degrees are accepted as equivalent to a U.S. bachelor's degree; that some U.S. graduate programs accept applicants with three-year bachelor's degrees; and that the Indian three-year degree has as many classroom hours as a U.S. four-year bachelor's degree. The Danzig evaluation does not address the findings of EDGE or explain why the conclusions of EDGE differ from her evaluation. It is unclear how Ms. [REDACTED] concludes that the beneficiary's field of study is in Computer Science, when the beneficiary completed far more courses and credits in Economics and Business and few courses in Computer Science. Finally, these materials do not examine whether those few U.S. institutions that may accept a three-year degree in a different field of study for graduate admission may do so on the condition that the holder of a three-year degree complete extra credits related to the field of study.

After reviewing all of the evidence in the record, the petitioner has failed to establish that the beneficiary qualifies as a professional under this labor certification because he does not hold a U.S. baccalaureate degree or a foreign equivalent degree in Computer Science. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

In response to the AAO's RFE, counsel acknowledged "that there are inconsistencies in the evaluation's conclusions as to the beneficiary's Bachelor of Commerce degree and acknowledges that EDGE does not suggest that Association Membership is equivalent to a U.S. Bachelor of Science degree in Computer Science as opposed to Accounting." Counsel then states that the beneficiary should have been considered as a skilled worker and not under the professional category.

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

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

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

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

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

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

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

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION

Grade School: [blank]

High School: [blank]

College: 4 years

College Degree Required: BS or equivalent experience

Major Field of Study: Computer Science

TRAINING: None Required.

EXPERIENCE: Three (3) years in the job offered or in the related occupation of Systems Analyst

OTHER SPECIAL REQUIREMENTS: thorough understanding of basic financial practices and functional and technical experience using the following Oracle Applications: A/R, A/P, PO, G/L, F/A, and INV; 2-3 yrs. Ex|. w/Oracle Applications v 11.0.3 or higher; implementation in one of the following Oracle Application Modules: A/R or G/L; 2-3 yrs experience in leading an Oracle implementation; Oracle multi-org experience; 2-3 years of experience in the following (sql, PL/SQL, Oracle Forms 4.5 or higher, Oracle Reports 2.5 or higher, SQL*LOADER and Oracle 7 or higher); 2-3 yrs. Exp. In a UNIX environment.

As is discussed above, the beneficiary possesses the equivalent of a Bachelor of Science degree in Accounting or Business. As a result, to qualify for the position per the terms of the labor certification, the petitioner would need to demonstrate that the beneficiary had “equivalent [work] experience,” e.g. work experience equating to a Bachelor of Science in Computer Science degree.

The DOL has provided the following field guidance: “When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the [labor certification] as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job.” See Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep’t. of Labor’s Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep’t. of Labor’s Empl. & Training Administration, Interpretation of “Equivalent Degree,” 2 (June 13, 1994). The DOL’s certification of job requirements stating that “a certain amount and kind of experience is the equivalent of a college degree does in no way bind [USCIS] to accept the employer’s definition.” See Ltr. From [REDACTED] Certifying Officer, U.S. Dept. of Labor’s Empl. & Training Administration, to [REDACTED] Esq., [REDACTED] (March 9, 1993). To our knowledge, these field guidance memoranda have not been rescinded.

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification specified an educational requirement of four years of college and a “B.S. or foreign equivalent.” The district court determined that “B.S. or foreign equivalent” relates solely to the alien’s educational background, precluding consideration of the alien’s combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word “equivalent” in the employer’s educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer’s intent. *Snapnames.com, Inc.* at *14.¹² In addition, 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* (D.D.C. Mar. 26, 2008) (upholding USCIS interpretation that the term “bachelor’s or equivalent” on the labor certification necessitated a single four-year degree).

The AAO RFE permitted the petitioner to submit any evidence that it intended the labor certification to allow an alternative to a U.S. bachelor’s degree or a single foreign equivalent degree, as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially

¹² In *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), the court concluded 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.” However, the court in *Grace Korean* makes no attempt to distinguish its holding from the federal circuit court decisions cited above. Instead, as legal support for its determination, the court cites to *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993) (the U.S. Postal Service has no expertise or special competence in immigration matters). *Id.* at 1179. *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. See section 103(a) of the Act.

qualified U.S. workers.¹³ Specifically, the AAO requested that the petitioner provide a copy of the signed recruitment report required by 20 C.F.R. § 656, together with copies of the prevailing wage determination, all recruitment conducted for the position, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts.

In response to the RFE, the petitioner submitted job advertisements from its website, *Transport Topics*, and the Dayton Daily News stating that a “BS in Computer Science or equivalent” was required. The petitioner also submitted the recruitment report and resumes for the three applicants who asked to be considered for the position; two of the applicants hold a Bachelor’s degree in a related field, the third did not indicate that he held any higher education. The recruitment report states that the three applicants were not qualified for the position as they did not have the special requirements set forth on the labor certification.

The terms of the labor certification seems to allow experience to establish the equivalent of a U.S. baccalaureate degree in excess of the three years of experience required for the position. Neither the labor certification nor any of the submitted recruitment documents explain how much or what type of experience would be equivalent to a U.S. bachelor’s degree in Computer Science. None of the evaluations submitted and discussed above, evaluate the beneficiary’s experience as relates to an educational degree. Instead, the evaluations specifically confine themselves to the beneficiary’s education.

On appeal, the petitioner submitted a letter from [REDACTED] of the University of Cincinnati stating that the beneficiary’s bachelor’s degree from Bharathiar University, training certificates, and more than seven years of experience in the field would qualify him for admission to the Master of Engineering Program in Computer Science and that the beneficiary would not need to complete any additional coursework to be eligible for admission. Although Mr. [REDACTED] states that the beneficiary “has, and in some areas far exceeds, the knowledge and experience of a bachelor’s degree student,” he does not conclude that the beneficiary holds the equivalent of a U.S. bachelor’s degree in Computer Science. Further, the specific requirements of one University’s admission criteria do not establish that the beneficiary’s work experience, education, and training are equivalent to a Bachelor of Science under the labor certification. The job requirements set forth in that document are controlling, but as noted above,

¹³ In limited circumstances, USCIS may consider a petitioner’s intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer’s subjective intent may not be dispositive of the meaning of the actual minimum requirements of the offered position. *See Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). The best evidence of the petitioner’s intent concerning the actual minimum educational requirements of the offered 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 ensures that the stated requirements of the offered position as set forth on the labor certification are not incorrectly expanded in an effort to fit the beneficiary’s credentials. Such a result would undermine Congress’ intent to limit the issuance of immigrant visas in the professional and skilled worker classifications to when there are no qualified U.S. workers available to perform the offered position. *See Id.* at 14.

the terms do not state what an equivalent degree would consist of. Therefore, the AAO cannot conclude that the beneficiary is qualified for the position based on work experience equivalency.

In response to the RFE, counsel states that the beneficiary's general coursework with the Indian bachelor's degree, post-graduate education, certificates from computer software and programming classes, and experience are the equivalent of a U.S. bachelor's degree in computer science. The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Evidence in the record establishes that the beneficiary has over nine years of experience in the field and that he attended certain computer software and programming classes in addition to his three-year bachelor's degree and admission with the Institute of Chartered Accountants. However, no evidence was submitted to demonstrate how or how much of the beneficiary's experience would be equivalent to a Bachelor of Science in Computer Engineering. It is noted that in addition to using the beneficiary's experience as an equivalent to the Bachelor of Science degree, the beneficiary must also have enough experience to meet the experience requirements of the labor certification. The same experience may not be used to show both the beneficiary's equivalence to a Bachelor of Science degree and that he meets the specific experience requirement. It is unclear that the beneficiary possesses enough experience to meet both of these requirements.

The petitioner failed to establish that under the terms of the labor certification, the petitioner intended the labor certification to require less than a four-year U.S. bachelor's or foreign equivalent degree, as that intent was expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.

Therefore it is concluded that the terms of the labor certification require a four-year U.S. bachelor's degree in Computer Science or experience equivalent to such a degree. The beneficiary does not possess such a degree nor does the evidence of record establish any sort of defined equivalency for a bachelor's degree or that the beneficiary met that equivalency. The petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date. Therefore, the beneficiary does not qualify for classification as a skilled worker.

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

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.