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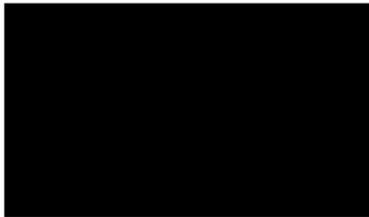


**U.S. Citizenship
and Immigration
Services**



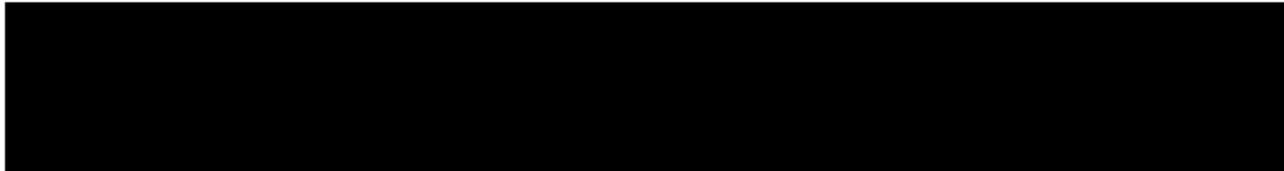
B6

DATE: OFFICE: TEXAS SERVICE CENTER

FILE: 

AUG 15 2012

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,

John Vaughan
for
Petry 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 sales force automation company. It seeks to employ the beneficiary permanently in the United States as a "Unix Administrator 4" pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A). Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification (Form ETA 750 or labor 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 has a U.S. bachelor's degree or foreign degree equivalent as required by the terms of the labor certification. The director denied the petition accordingly.

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.²

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 May 13, 2003, which is the date the Form ETA 750 was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).³ The Immigrant Petition for Alien Worker (Form I-140) was filed on December 8, 2006.

¹ After March 28, 2005, the correct form to apply for labor certification is the ETA Form 9089.

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

³ 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.

The job qualifications for the certified position of business analyst are found on Form ETA 750, Part A. Block 13 describes the job duties to be performed as follows:

Responsible for installation and maintenance of UNIX operating system(s) and related software. Manage and make configuration decisions for various UNIX systems. Evaluate system specifications, as well as the input/output process and the working parameters for hardware/software compatibility. Create and develop scripts that will gather hardware, operating system and major application information, as needed. May be required to develop and communicate Backup Policies and Procedures for various operating systems. Troubleshoot networking, and operating system problems.

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

Block 14:

EDUCATION:

Grade School: "X"

High School: "X"

College: "X"

College Degree Required: "BA/BS or equivalent"

Major Field of Study: "Comp. Sci., Engineering, Technology**"

TRAINING: No requirement listed

EXPERIENCE: 5 years in the job offered or 5 years in a related occupation such as UNIX Administrator, Systems Administrator, Netware Administrator, or any related position

Block 15:

OTHER SPECIAL REQUIREMENTS: "**Major Fields of Study accepted include Computer Science, Engineering, Technology, or any related field."

Therefore, the labor certification requires an individual with a U.S. bachelor's degree or equivalent in computer science, engineering, technology, or any related field and five years of experience in the offered job of "Unix Administrator 4" or in the related occupations of UNIX Administrator, Systems Administrator, Netware Administrator, or any related position.

As evidence of the beneficiary's educational qualifications, the petitioner submitted copies of transcripts and the beneficiary's diploma, dated October of 1985, for a three-year program (completed in six semesters from the fall term of 1981 through the winter term of 1984) in Electrical Engineering Technology Electronics Option from the Ryerson Polytechnical Institute in Toronto,

Ontario, Canada. In addition, the record contains a copy of the beneficiary's Secondary School Honour Graduation Diploma showing the beneficiary's graduation from Silverthorn Collegiate Institute in Etobicoke, Ontario, Canada, on June 30, 1981. Further, the record contains copies of transcripts from the Ryerson Polytechnical Institute reflecting that the beneficiary successfully completed courses in Introductory Sociology II in the winter semester of 1986, Computer Programming I-Pascal in the winter semester of 1986, Advanced Programming-Pascal in the spring semester of 1986, and Database Design and Information Access I in the winter semester of 1988. These transcripts provide no indication that the beneficiary received any college or university degree as a result of these studies.

The record contains an evaluation of the beneficiary's education by [REDACTED] Ph.D., who asserts that the beneficiary's education is equivalent to a four-year Bachelor of Computer Engineering degree from an accredited institution of higher learning in the United States. However, the record also contains a separate evaluation from C.E.I.E. Specialists, Inc., which asserts that the combination of the beneficiary's education in Canada and subsequent work experience is the equivalent of a four-year Bachelor of Science degree in Electrical Engineering Technology at an accredited institution of higher learning in the United States. More importantly, the evaluation from C.E.I.E. Specialists, Inc. specifically concludes that the combination of the beneficiary's high school diploma and his diploma from Ryerson Polytechnical Institute comprises:

...the U.S. equivalent of High School Training; and the Post-Secondary College or University degree/s from an accredited U.S. institution with these Semester Credit Hours:

- Ninety Semester Credit Hours = A.S. Electrical Engineering Technology Plus Thirty (30) Credits.

Thus, the two evaluations are inconsistent with each other. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director denied the petition on September 4, 2007. The director determined that the beneficiary's successful completion of a three-year program in Electrical Engineering Technology Electronics Option from the Ryerson Polytechnical Institute could not be accepted as a foreign equivalent degree to a four-year U.S. bachelor's degree in computer science, engineering, technology, or any related field, as required on the labor certification to qualify for the proffered position.

On appeal, counsel asserts that the petitioner's use of the language "BA/BS or equivalent" in describing the college degree required for the proffered position at Block 14 of the Form ETA 750 was indicative of the petitioner's intent to accept either a bachelor's degree or an alternative combination of education and work experience as sufficient to qualify for the proffered position. In

support of this assertion, counsel cites the decision in *Grace Korean United Methodist Church v. Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), in which a federal district court held that United States Citizenship and Immigration Services (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.” *Id.* at 1179. Counsel also provides a copy of an unpublished AAO decision in support of this assertion. Counsel contends that USCIS failed to consider whether the beneficiary’s ten years of related work experience would allow him to qualify as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act.

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 A of the Form ETA 750 indicates that the DOL assigned the occupational code of 15-1071 with accompanying job title “network and computer system administrator” to the proffered position of “Unix Administrator 4.” 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. *See* <http://www.bls.gov/soc/socguide.htm>. Prior to O*NET, the DOL used the Dictionary of Occupational Titles (DOT) occupational classification system. The O*NET website contains a crosswalk that translates DOT codes into SOC codes. *See* <http://online.onetcenter.org/crosswalk/DOT>. However, in the instant case, when the DOT occupational code of 15-1071 is entered into the O*NET crosswalk, the crosswalk indicates that the occupational code of 15-1071 is no longer in use, but that the SOC occupational code of 15-1142.00 is now used for the position of network and computer system administrator.

The O*NET online database states that this occupation falls within Job Zone Four, requiring “considerable preparation” for the occupation type closest to the proffered position. The DOL assigns a standard vocational preparation (SVP) of 7.0 to <8.0 to the occupations, which means that “[M]ost of these occupations require a four-year bachelor’s degree, but some do not.” O*NET does not provide a statistical breakdown based upon the degree type held by individuals employed in the occupation of network and computer system administrator. Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

A considerable amount of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete

four years of college and work for several years in accounting to be considered qualified.

Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

The labor certification specifies that the proffered position of "Unix Administrator 4" requires a bachelor's degree in computer science, engineering, technology, or any related field, and five years of experience in the job offered or five years in the related occupations of UNIX Administrator, Systems Administrator, Netware Administrator, or any related position, which is more than the minimum required by the regulatory guidance for professional positions found at 8 C.F.R. § 204.5(l)(3)(ii)(C). Thus, combined with the DOL's classification and assignment of educational and experiential requirements for the occupation, the certified position must be considered as a professional occupation.

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.

On September 9, 2011, the AAO issued a Notice of Derogatory Information and Request for Evidence (NDI/RFE) to the petitioner and counsel. In this request, the AAO noted that there was no evidence in the record of proceeding that the beneficiary ever enrolled in classes resulting in the award of a degree beyond the diploma he earned after completion of his three-year course of study at Ryerson Polytechnical Institute in Canada. The AAO also noted that the petitioner did not specify on the Form ETA 750 that the minimum academic requirements of a bachelor's degree in computer science, engineering, technology, or any related field might be met through a combination of lesser degrees and/or a quantifiable amount of work experience, which assumes that the skilled worker classification is even applicable.

The AAO further advised that according to the Electronic Database for Global Education (EDGE) of the American Association of Collegiate Registrars and Admissions Officer (AACRAO), the beneficiary's diploma from Ryerson Polytechnical Institute is equivalent to three years of undergraduate study in the United States and that the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually less than a four-year U.S. bachelor's degree or its foreign equivalent and/or a quantifiable amount of work experience when the labor market test was conducted which, again, assumes the applicability of the skilled worker classification. The AAO also requested that the petitioner submit any evidence that it intended the labor certification to require an alternative to a U.S. bachelor's degree or a single foreign equivalent degree, as that intent was specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.⁴ 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.

⁴ 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 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 Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). The DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree." *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.

In response to the NDI/RFE, counsel submits a statement in which he reiterates his assertion that the petitioner's use of the language "BA/BS or equivalent" in describing the college degree required for the proffered position at Block 14 of the Form ETA 750 was indicative of the petitioner's intent to accept either a bachelor's degree or an alternative combination of education and work experience as sufficient to qualify for the proffered position. Counsel also reiterates his contention that USCIS failed to consider whether the beneficiary's ten years of related work experience would allow him to qualify as a skilled worker under section 203(b)(3)(A)(i) of the Act, which 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. Counsel includes copies of the documentation prepared in accordance with the prior DOL labor certifications regulations at 20 C.F.R. § 656 (2004), including a signed recruitment report, the prevailing wage determination, online and print recruitment conducted for the position, and the posted notice of the filing of the labor certification.

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

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 left to USCIS to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. 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 1008, 1012-1013 (D.C. Cir. 1983).⁶

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).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

⁶ The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

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).

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.

Counsel's reliance upon the decision reached by the court in *Grace Korean United Methodist Church v. Chertoff*, 437 F. Supp. 2d 1174, is misplaced. In *Grace*, a federal district court held that United States Citizenship and Immigration Services (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." *Id.* at 1179. Although the reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. *See Matter of K-S-*, 20 I&N Dec. 715, 719 (BIA 1993). A judge in the same district, however, subsequently held that the assertion that DOL certification precludes USCIS from considering whether the alien meets the educational requirements specified in the labor certification is wrong. *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 *5 (D. Or. Nov. 30, 2006).

The AAO notes that in *Snapnames.com, Inc.*, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Id.* at 11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Id.* at 14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at 17, 19. 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 what would constitute an equivalency to the requirement of a bachelor's degree in computer science, engineering, technology, or any related field.

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). 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 that the beneficiary has to be found qualified for the position. *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.

Furthermore, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) 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.) 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. See *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 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 profession 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, we could not consider education earned at an institution other than a college or university.

Moreover, as advised in the NDI/RFE issued to the petitioner and counsel by this office, the AAO has reviewed the 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.” <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.⁷ 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.⁸

EDGE's credential advice reflects that the beneficiary's diploma from Ryerson Polytechnical Institute is equivalent to three years of undergraduate study in the United States.

As previously discussed, the record contains an evaluation of the beneficiary's education by [REDACTED] Ph.D., who asserts that the beneficiary's education is equivalent to a four-year Bachelor of Computer Engineering degree from an accredited institution of higher learning in the United States. However, the record also contains a separate evaluation from C.E.I.E. Specialists, Inc., which asserts that the combination of the beneficiary's education in Canada and subsequent work experience were the equivalent of a four-year Bachelor of Science degree in Electrical Engineering Technology at an accredited institution of higher learning in the United States. More importantly, the evaluation from C.E.I.E. Specialists, Inc., specifically concludes that the beneficiary's diploma from Ryerson Polytechnical Institute is the equivalent of an "A.S. Electrical Engineering Technology Plus Thirty (30) Credits," at an accredited U.S. institution. Therefore, the two evaluations are inconsistent with each other and reach contradictory conclusions in evaluating the beneficiary's academic credentials.

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 (Comm'r 1988). *See also 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). 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

⁷ *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.

⁸ 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.

the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even 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 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The evaluations of record are not consistent and are not persuasive evidence that the beneficiary's Canadian education is equivalent to a U.S. bachelor's degree. The information provided by EDGE relating to the beneficiary's diploma in the Canadian educational system is consistent with the evaluation from C.E.I.E. Specialists, insofar as it concluded that the beneficiary's diploma from Ryerson Polytechnical Institute is equivalent to an associate's degree in electrical engineering technology plus thirty (30) additional credits. A bachelor's degree in the United States, however, generally requires four years of post-secondary education. *See Matter of Shah*, 17 I&N Dec. 244.

The Form ETA 750 does not provide that the minimum academic requirements of a bachelor's degree in computer science, engineering, technology, or any related field might be met through three years of college or some alternative formula other than that explicitly stated on the Form ETA 750. The copies of the notice(s) of Internet and newspaper advertisements, provided with the petitioner's response to the NDI/RFE issued by this office, are of minimal probative value as these announcements provide a very general description of the duties of the proffered position of "Unix Administrator 4" if any description of duties is provided at all, without specifying whether any degree or education is required. Nevertheless, both the petitioner's business necessity letter that accompanied the original filing of the Form ETA 750 with the DOL and the posted notice of the filing of the labor certification with the DOL specifically state that the requirements of the proffered position of "Unix Administrator 4" are a "Bachelor's Degree, or its equivalent, in Computer Science, Engineering, Technology, or a related field," without advising any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency.

The petitioner failed to establish that the terms of the labor certification are ambiguous and that 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 potentially qualified U.S. workers.

The beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and, thus, is not eligible for preference visa classification as a professional under section 203(b)(3)(A)(ii) of the Act.

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).

In the instant case, the labor certification states that the offered position requires a bachelor's degree in computer science, engineering, technology, or any related field, and five years of experience in the job offered or five years in the related occupations of UNIX Administrator, Systems Administrator, Netware Administrator, or any related position, which is more than the minimum required by the regulatory guidance for skilled worker positions found at 8 C.F.R. § 204.5(l)(3)(ii)(B).

The record includes letters from former employers documenting that the beneficiary had more than ten years of experience in the offered job or a related occupation as of the priority date. As previously discussed, however, the beneficiary does not have a bachelor's degree or a foreign equivalent degree in one of the fields identified on the Form ETA 750. Therefore, while he meets the minimum experience requirement for classification as a skilled worker, the beneficiary is not eligible for such classification because he does not meet the educational requirement of the labor certification.

Accordingly, the beneficiary is not eligible for classification as a skilled worker under section 203(b)(3)(A)(i) of the Act.

For all of the reasons discussed in this decision, the AAO concludes that the appeal must be dismissed. The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.