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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

SHAW INDUSTRIES GROUP, INC.
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DALTON, GA 30722

B6

Date: **AUG 22 2012**

Office: NEBRASKA SERVICE CENTER FILE: [REDACTED]

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:

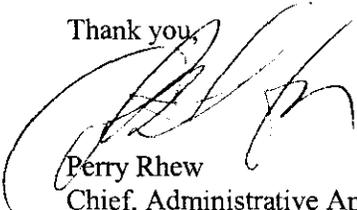
[REDACTED]

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 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,


Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is a carpet and flooring manufacturing company. It seeks to employ the beneficiary permanently in the United States as a senior systems engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.¹ 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 AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

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). Here, the Form ETA 750 was accepted for processing on May 12, 2003.³ The petitioner submitted this along with the Immigrant Petition for Alien Worker (Form I-140).

¹ On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

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 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).

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 technical product manager are found on Form ETA-750 Part A. Item 13 describes the job duties to be performed as follows:

Responsible for product life cycle development of B2B Customer Service and Supply Chain solutions, with emphasis on FOCUS and Carpet Manufacturing Logistics. Develop, design and implement B2B architecture for commercial-based middleware solutions. Assist in the analysis and documentation of business and system requirements. Create functional and technical specifications. Responsible for Application Integration and Architecture of commercial-based web applications. Collaborate with staff members and business owners to resolve, trouble shoot, and fix production issues.

Multiple Openings.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education (number of years)

Grade school	Y
High school	Y
College	4
College Degree Required	Bach. or foreign equiv.
Major Field of Study	Computer Science or related engineering field

Experience:

Job Offered	4 years
(or)	
Related Occupation	4 years: Web-Based Programming

Block 15: Other Special Requirements The following experience (which may have been obtained concurrently):
-1 yr, experience with FOCUS and Carpet Manufacturing Logistics;
-3 yrs. experience using MQ-Series, XML, and XSL; and
-3 yrs. experience designing and developing web solutions on Windows NT platforms.

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*, 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).

As set forth above, the proffered position requires a four-year Bachelor of Science degree or the foreign equivalent in Computer Science or a related engineering field. The terms of the labor certification also require four years of experience in the job offered or four years in the designated related occupation with the above designated special skills.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's Completion Certificate from the Aeronautical Society of India and a certificate that says he is eligible for membership. The petitioner also submitted the mark sheet from the associate membership examination for the Aeronautical Society of India. This evidence indicates that the beneficiary completed the Aeronautical Society of India's Associate Membership exam. On the Form ETA 750B, the beneficiary indicated that he has a bachelor's degree from the Aeronautical Society of India.⁴ The petitioner did not submit any document to show that the beneficiary was issued a bachelor's degree.

In support of the beneficiary's education qualifications, the petitioner submitted a credential evaluation from Barry Silberzweig of The Trustforte Corporation. The evaluation concluded that the beneficiary has the "equivalent of" a four-year U.S. Bachelor of Science degree in Engineering.

The director denied the petition as he determined that the beneficiary's qualification as a member in the Aeronautical Society of India was not a bachelor's degree as required by the labor certification. Additionally, the evidence in the record suggested that membership in the Society is contingent upon education and experience and is not a foreign equivalent to a bachelor's degree.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel stated that the director erred in finding that the beneficiary's membership in the Aeronautical Society of India was not a foreign equivalent degree to a U.S. bachelor's degree.

DOL assigned the code of 15-1032, "Computer Software Engineer, Systems Software," to the proffered position. *See <http://online.onetcenter.org/link/summary/15-1032.00>* (accessed July 13, 2012) and its description of the position and requirements for the position most analogous to the

⁴ The beneficiary also indicated on the Form ETA 750B that he received Certificates from U.P. Sainik School, Sarojini Nagar Lucknow, India. The record does not contain these certificates and the programs of study appear to be the equivalent to secondary or high school.

petitioner's proffered position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position.

According to DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. DOL assigns a standard vocational preparation (SVP) range of 7-8 to Job Zone 4 occupations, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." See <http://online.onetcenter.org/link/summary/15-1032.00#JobZone> (accessed July 13, 2012). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years 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. Because of the requirements of the proffered position and DOL's standard occupational requirements, the proffered position is for a professional, but might also be considered under the skilled worker category.

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.

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.

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.

* * *

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

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

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),

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).

For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(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." Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).⁷ The record contains no evidence that the Aeronautical Society of India is a college or university. Here, the beneficiary does not have a bachelor's degree, or a bachelor's degree from a college or university.

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

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).

⁷ Compare 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

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 U.S. 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.” In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court except in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). 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).

We note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a ‘B.S. or foreign equivalent.’ The district court determined that ‘B.S. or foreign equivalent’ relates solely to the alien’s educational background, precluding consideration of the alien’s combined education and work experience. *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 degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner’s asserted intent, USCIS “does not err in applying the requirements as written.” *Id.* *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008) (upholding an interpretation that a “bachelor’s or equivalent” requirement necessitated a single four-year degree). In this matter, the Form ETA 750 does not specify an equivalency to the requirement of a Bachelor of Science degree, or its foreign equivalent.

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 DOL has formally issued or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification.

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(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. *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 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.

The information in the record indicates that the beneficiary passed the associate member examination and is a “graduate” of the Aeronautical Society of India (“ASI”). The beneficiary completed the examinations in June 1993. A letter from J.R. Bhaskar, Secretary of the Aeronautical Society of India states that “a pass [of the Associate Membership Examination in Sections A & B] has been recognized by the Central Government, in the Ministry of Education, Government of India . . . as being equivalent to a degree in Aeronautical Engineering from an Indian University.” Counsel asserts that as the Form ETA 750 states that a foreign equivalent would be acceptable to a bachelor’s degree, the beneficiary’s status in the Aeronautical Society of India qualifies him for the position under the terms of the labor certification. No Bachelor of Science degree appears in the record and, except for the representation made on Form ETA 750B, the beneficiary does not claim to have a bachelor’s degree. Counsel states that a “foreign equivalent” does not necessitate a “foreign equivalent degree” but only an equivalency to a U.S. bachelor’s degree in some form.

The record also contains two evaluations from the Trustforte Corporation, completed by [REDACTED] dated January 6, 2003 and September 11, 2007. In his January 6, 2003 evaluation, Mr. [REDACTED] describes the beneficiary's completion of "a post-secondary program in Engineering and [that he] passed the Section A and B Examinations at the Aeronautical Society of India." He states that the beneficiary was additionally admitted as a Graduate Member of the Aeronautical Society of India. The evaluator concludes that based on the foregoing he has "attained the equivalent of a Bachelor of Science in Engineering from an accredited US institution of higher education." Mr. [REDACTED] states that the beneficiary completed his post-secondary studies at the Aeronautical Society of India, which "provides academic programs comparable to bachelor's programs at universities in India." He describes coursework taken including Mathematics, Engineering, Thermodynamics, Electrical Engineering, Engineering Drawing and Design, Aerodynamics, Mechanics of Solids, Materials Science, and related subjects. He states that "in the opinion of the Ministry of Education and Social Welfare of the Government of India, the completion of the Section A and B Examinations of the Aeronautical Society of India is considered to be equivalent to a Bachelor's degree in Engineering from a recognized Indian University."

The second evaluation Mr. [REDACTED] authored explains in more detail the Aeronautical Society of India. He states that the Aeronautical Society of India was established in 1948 under the Societies Registration Act XXI of 1860 and is a "leading professional body devoted to the advancement of Aeronautical Sciences and Engineering in India." He continues that the Aeronautical Society of India "conducts research and regulates professional standards in the sciences, engineering and technology and management of Aerospace, Aeronautics, and Aviation." He further states that the "Society offers recognized programs of post-secondary education that lead to bachelor's-level credentials." He qualifies, however, that the Aeronautical Society of India is an "industry organization." He then outlines from 1987 to 1990, the beneficiary took coursework in Aeronautical Engineering, including Principles of Flight, Engineering Thermodynamics, Engineering Drawing and Design, Mechanics of Solids, and other related courses. Based on this work, and completion and passage of the Section A examinations, the beneficiary began coursework from 1991 through 1993 toward Section B. Mr. [REDACTED] outlines completed courses including Aerodynamics, Vibration and Aeroelasticity, Advanced Strength of Materials, Aircraft Structures, Aerodynamic Design and Testing and related subjects. He then completed and passed Section B of the exams and "was issued a Completion Certificate." He states that the completion of Section A and Section B examinations with the Aeronautical Society of India is "regularly evaluated by international educational authorities as equivalent to a Bachelor of Science Degree in Engineering." However, he states that the "Aeronautical Society of India is not a 'university' in the traditional sense."

The record also contains an e-mail from the Ganesh Institute that states that the beneficiary was a "bonafide student of this college studying in A.M.Ae.S.I Section A & Section B Aerodynamics courses since January 1988 to June 1992." However, the record does not contain any Bachelor's degree issued by either the Ganesh Institute of Engineering or from the Aeronautical Society of India.

The record also contains a letter from the Aeronautical Society of India, which certifies that the beneficiary has completed both Sections A and B in Aeronautical Engineering and is “equivalent to a degree in Aeronautical Engineering from an Indian University for purposes of recruitment to superior posts/services.” The beneficiary’s certificate from the Aeronautical Society of India shows that he “qualified for membership and has been elected as Graduate... of the Society on October 14, 1998.”

While the evaluations determine and the letters state that passage of Section A and Section B would be “equivalent” to a bachelor’s degree, nothing in the record shows that the beneficiary has a four-year bachelor’s degree, or “foreign equivalent” thereof, in the required field of Computer Science or a related engineering field to meet the terms of the certified labor certification, but instead has the “equivalent” of a degree based on the certificate issued by the Aeronautical Society of India.

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.* at 795. 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 has additionally 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.” <http://edge.aacrao.org/info.php>. Authors for EDGE work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials.⁸ 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.*

⁸ *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.

USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁹

According to EDGE:

Associate Membership in The Aeronautical Society of India is earned after the completion of 20 examinations, Part A and B. Part A represents general engineering subject matter consisting of 10 subject exams while candidates select in Part B one of four streams, also containing 10 examinations each (as well as two practical training courses of 6 weeks duration) in a field of aeronautical engineering. The Government of India accepts Associate Member status in The Aeronautical Society of India as comparable to a Bachelor of Engineering or Bachelor of Technology degree in aeronautical engineering.

Associate Membership in The Aeronautical Society of India represents attainment of a level of education comparable to a bachelor's degree in the United States. The entry requirement is 12th Standard completion with 50% marks in math, chemistry, and physics.

However, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(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.)

Nothing in the record shows that the beneficiary has a bachelor's degree issued by a college or university in accordance with the regulation for classification as a professional. Mr. [REDACTED] specifically notes this deficiency in his evaluation. He states that “Aeronautical Society of India is not a ‘university’ in the traditional sense.”¹⁰ Additionally, as noted by the director, and as cited

⁹ 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.

¹⁰ The information on the Aeronautical Society of India's webpage states that:

Associate Members shall have passed the Associate Membership Examination of

above, the equivalency is also based on a practical training component, which requires two practical training courses of six weeks duration.

The AAO issued a Notice of Intent to Dismiss (NOID) to the petitioner, informing the petitioner of EDGE and the deficiencies in the evaluations and the beneficiary's education in comparison to the requirements on the labor certification. The petitioner did not respond, and did not submit any additional evidence.

Therefore, the evidence in the record is not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. Bachelor's degree in Computer Science or a related Engineering field as required by the terms of the labor certification.

The Form ETA 750 does not provide that the minimum academic requirements of a Bachelor of Science degree in Computer Science or a related Engineering field might be met through any defined equivalency to a bachelor's degree or through issuance of a certificate, passage of examinations, a combination of education and experience, or based on anything less than a single-source four-year bachelor's degree. The petitioner did not state an equivalent or define any equivalent anywhere on the Form ETA 750, including but not limited to, in Block 15.

The beneficiary does not have a four-year single source foreign equivalent bachelor's degree issued by a college or university or a United States baccalaureate degree and, thus, does not qualify for preference visa classification as a professional under section 203(b)(3)(A)(ii) of the Act.

On appeal, counsel asserts that the petition should be considered under the skilled worker category. The regulation at 8 C.F.R. 204(5)(1)(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

the Society or any other examination acceptable to the Council as of a equivalent standard, including a degree in engineering in any discipline and shall have been engaged, in addition to the period of training, for at least 2 years in the profession of aeronautics or in other special scientific or technical work applied to aeronautics including work connected with aircraft engineering or operations or post-graduate studies in engineering.

See <http://www.aesi-hyd.com/gen-info.htm> (accessed July 7, 2012). This explanation of the requirements for membership does not establish that the Society is an educational facility or that the Society is qualified to issue an educational degree as opposed to administering examinations. Instead, the explanation makes clear that Associate Membership is based on passing exams and additional related experience. Therefore, the credential would not be a single-source, four-year bachelor's degree to qualify as a bachelor's degree or foreign equivalent.

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

As stated above, the petitioner failed to state that it would allow any equivalent to a bachelor's degree on Form ETA 750.¹¹ 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'r 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).

The petitioner submitted recruitment materials on appeal. The job advertisements provided from the *Daily Citizen* and dated February 1, 2, and 3, 2003 stated that the requirements for the position were a Bachelor's degree or foreign equivalent in Computer Science or related Engineering Field. The advertisements placed in the *Chattanooga Times Free Press* on February 2, 3, and 4, 2003 states that the position requires "Bachelor (or foreign equivalent) in CS or related Engineering field." The job advertisements posted on Georgia's Job Bank states that "Bachelor's or foreign equiv. in CS or related eng. field" is required. The job advertisement posted internally also states that the position requires "Bachelor's degree (or foreign equivalent) in Computer Science or related engineering field." The petitioner does not state or allow for any equivalency to a Bachelor's degree, or state any language that it was willing to accept a certificate or passage of exams in lieu of a four-year bachelor's degree either on Form ETA 750 or in its recruitment materials.

The petitioner submitted a chart of the 21 applicants considered for the position. The chart included

¹¹ 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 ETA 750, Part A 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 [REDACTED] 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). 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 [U.S. Citizenship and Immigration Services (USCIS)] to accept the employer's definition" and SESAs should "request the employer provide the specifics of what is meant when the word 'equivalent' is used." *See* Ltr. From [REDACTED] Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to [REDACTED] (March 9, 1993). 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 [REDACTED] Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to [REDACTED] INS (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.

a column for each applicant's education and experience and a column for the decision of the petitioner. From the recruitment, it does appear that the petitioner considered, or did not immediately discount, those with bachelor's degrees in fields other than Computer Science or a related engineering field: bachelor's degrees in Mechanical Engineering, Data Processing, and Information Systems were considered; incomplete degrees were marked, "not complete" for the required degree. However, none of the recruitment explicitly stated that it would accept anything other than a Bachelor of Science in Computer Science or a related engineering field or its foreign equivalent. While many of the beneficiary's courses are in aeronautical engineering and mechanical engineering, we will accept that the petitioner was willing to accept aeronautical engineering and mechanical engineering as related engineering fields. However, it is unclear from the record whether applicants would have been on notice from the advertisements what a "related field of engineering" would be and whether any applicants were dissuaded from applying for the position based on the stated Bachelor of Science degree requirement and field specificity.

However, both the labor certification and the advertisements require a bachelor's degree or its foreign equivalent. Foreign equivalent is interpreted to mean a four-year, single-source bachelor's degree. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 30, 2006); *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008). The beneficiary does not have a four-year, single-source bachelor's degree to meet the terms of the labor certification whether considered as a professional or as a skilled worker. The petitioner did not state on Form ETA 750 that it was willing to accept any defined equivalency to a four-year bachelor's degree. Therefore, the petitioner has not demonstrated that the beneficiary has the education required for the position offered and the petition may not be approved as a professional or skilled worker.

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.