

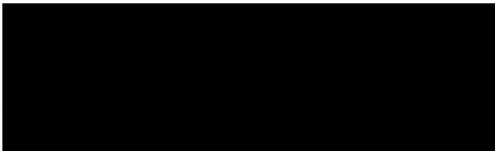
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090
U.S. Citizenship
and Immigration
Services

B6



Date: FEB 23 2012

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

Thank you,

Kerian S. Poulos for

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 an apparel manufacturing firm. It seeks to employ the beneficiary permanently in the United States as a computer systems analyst. As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The 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 (Acting Reg'l Comm'r 1977). Here, the Form ETA 750 was accepted for processing on March 24, 2005.³ The Immigrant Petition for Alien Worker (Form I-140) was filed on April 19, 2007.

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

¹ After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089. *See* 20 C.F.R. § 656.17(a)(1).

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.

Analyze & review existing information systems & design & develop management informatin [sic] systems, design & develop net enabled modules for inventory & order management systems, online import shipment tracking system, online distribution tracking system utilizing SQL PLUS, PL-SQL, HTML, DHTML & Java programming. Implementation experience in Oracle financials software, develop user interface utilizing developer 2000. design relational database management systems utilizing Oracle & design customize reports utilizing Forms 6i & Reports 6i & utilize SQL*Loader to import & export data from database to reportwriter. Design & release detailed functional & technical specifications for reports, program modifications & data mapping for inbound & outbound interfaces, prepare flowcharts & diagrams to illustrate sequence of steps program must follow & to describe logical operations involved, direct & participate in various aspects of life cycle of a system including analysis, design programming, testing, maintenance & support. Write documentation to describe program development, logic, coding & corrections & extended objects & third party components, test & develop applications for software quality assurance including Windows & Windows NT. Develop manuals for users to describe steps to be followed for installation & system requirements, trouble-shooting techniques. Assists users to solve operating problems & monitor performance of program after implementation & modifies according to user requirements.

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	[blank]
High school	[blank]
College	X
College Degree Required	Bach. Deg./Equivalent
Major Field of Study	Comp. Sci/Mgmt. Info. Systems

Experience:

Job Offered	2 years
(or)	
Related Occupation	[blank]

Block 15:

Other Special Requirements [blank]

As set forth above, the proffered position requires a Bachelor's degree or equivalent in Computer Science or Management Information Systems and two years of experience in the job offered. The labor certification did not provide any alternative to the education or experience requirements found in Block 14.

On the Form ETA 750B, signed by the beneficiary on March 23, 2005, the beneficiary listed his prior education as: Bachelor Degree in Commerce and Master's Degree in Commerce from [REDACTED] Certificate Associate Member with [REDACTED] India; and Certificates in Oracle Si with [REDACTED] and [REDACTED] Mumbai, India. The Form ETA 750B also reflects the beneficiary's experience as follows: Oct. 1999 to April 2001, [REDACTED] with [REDACTED] May 2001 to July 2002, programmer analyst with [REDACTED]; August 2002 to Oct. 2004, programmer analyst with [REDACTED] Oct. 2004 to date of signing, programmer analyst with the petitioner.

In support of the beneficiary's educational qualifications, the record contains a copy of the beneficiary's three-year Bachelor of Commerce degree from [REDACTED] awarded April 1984, his two-year Master of Commerce degree from [REDACTED] awarded April 1994, and a certificate that the beneficiary passed the Final Examination held by [REDACTED] of India [REDACTED] on December 2, 1991, plus the corresponding transcripts. The petitioner also submitted Certificates of Proficiency in Oracle 8i with [REDACTED] membership with [REDACTED]. The record also contains credentials evaluations from [REDACTED] of the City University of New York [REDACTED]

[REDACTED] concludes that the beneficiary holds the equivalent of a U.S. Bachelor of Science degree in Management Information Systems and a Master of Business Administration degree with a concentration in Accounting based on the beneficiary's Indian education and his experience. [REDACTED] concludes that the beneficiary has the equivalent to a four-year Bachelor's degree in Computer Science in the United States based on the combination of the beneficiary's three-year bachelor degree and his two-year master's degree. [REDACTED] concludes that the beneficiary holds a four-year Bachelor's degree in Computer Science in the United States based solely on the beneficiary's Indian bachelor's degree and that he holds the equivalent of a United States Master's degree based on his Indian Master's degree. The three evaluations are inconsistent. U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (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). The

⁴ The petitioner submitted only the evaluation from [REDACTED] before the director. The other evaluations were submitted for the first time on appeal.

evaluations here conflict. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The director denied the petition on May 7, 2009. He determined that the labor certification did not provide that the beneficiary's education from [REDACTED] University could be combined with any other educational degree or with experience to establish that the beneficiary has a single-source bachelor's degree equivalent to a U.S. baccalaureate in computer science or management information systems. Further, no evidence in the record otherwise indicated that the petitioner intended it would accept a combination of education and experience in lieu of a single-source degree in computer science or management information systems at the time the labor certification was filed.

Part A of the ETA 750 indicates that the DOL assigned the occupational code of 15-1051, computer systems analysts, applications to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://www.onetonline.org/link/summary/15-1121.00?redir=15-1051.00> (accessed January 10, 2012) and its description of the position and requirements for the position most analogous to the 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/15-1051.00> (accessed March 23, 2011). 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.

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

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence

of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

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

The regulation at 8 C.F.R. § 204(5)(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 Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

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

Because the petition's proffered position qualifies for consideration under both the professional and skilled worker categories, the AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional category.

Initially, however, we will provide an explanation of the general process of procuring an employment-based immigrant visa and the roles and respective authority of both agencies involved.

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

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

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by Federal Circuit Courts.

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. See *Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).⁵ *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

* * *

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. § 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 DOL that stated the following:

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

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 DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of USCIS to determine if the petition and the alien beneficiary are eligible for the classification sought. For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien have a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.)

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

Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d 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 professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate degree, we would not consider education earned at an institution other than a college or university.

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. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l Comm'r 1977).

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that USCIS "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." 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 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).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience.

Snapnames.com, Inc. at *11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the USCIS properly concluded that a single foreign degree or its foreign equivalent is required. *Snapnames.com, Inc.* at *17, 19.⁶

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

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, 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." <http://www.aacrao.org/About-AACRAO.aspx> (accessed January 10, 2012). Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* According to the registration page for EDGE, EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php> (accessed January 10, 2012). 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

⁶ On appeal, counsel refers to a decision issued by the AAO, but does not provide its published citation. While 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a).

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.

Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁸

EDGE states that a bachelor of commerce degree in India “represents attainment of a level of education comparable to two to three years of university study in the United States.” <http://edge.aacrao.org/country/credential/bachelor-of-arts-ba-bachelor-of-commerce-bcom-bachelor-of-science-bsc?cid=single> (accessed January 10, 2012). EDGE provides that a master of commerce degree in India “represents the attainment of a level of education comparable to a bachelor’s degree in the United States.” <http://edge.aacrao.org/country/credential/master-of-arts-or-commerce?cid=single> (accessed January 10, 2012). Thus, it is concluded that the beneficiary more likely than not has the foreign equivalent of a bachelor’s degree in commerce. However, the labor certification clearly states that the offered position requires a bachelor’s degree in computer science or management information systems.

Regarding the beneficiary’s [REDACTED] states that the Associate Membership of the ICWAI is:

Awarded upon passing of Final Examination of the Institute and obtaining for a period of not less than three years of practical experience covering different branches of Costing or Industrial Accounting. The practical experience as above may be acquired prior to or after passing the Final Examination or partly before and partly after passing the final examination. The [REDACTED] is a professional qualification awarded upon passing the ICWAI Final Exam and meeting the requirements as stated above.

<http://edge.aacrao.org/country/credential/institute-of-cost-works-accountants-of-india-icwai-final-exam-award-of-association-membership?cid=single> (accessed January 10, 2012). Additionally, EDGE states that passage of the ICWAI Final Exam and Association Membership would represent “attainment of a level of education comparable to a bachelor’s degree in the United States.” *Id.*

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 ICWAI credential is not based strictly on a four-year educational program, but instead relies on a combination of instruction, practical experience, and examinations. As such, the ICWAI credential alone would not meet the professional classification. 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.

While no degree is required for the skilled worker classification, the regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification must be accompanied by evidence that the beneficiary "meets the education, training or experience, and any other requirements of the individual labor certification." In the instant case, offered position of computer systems analyst qualifies for consideration under both the professional and skilled worker categories. The beneficiary's master of commerce degree from [REDACTED] University has been determined to be the foreign equivalent of a U.S. bachelor's degree. The beneficiary possesses a single-source foreign equivalent degree to a U.S. bachelor's degree. Therefore, the beneficiary can be classified as a professional. Alternatively, the beneficiary's passage of the ICWAI Final Exam and Associate Membership of the ICWAI represents attainment of a level of education comparable to a bachelor's degree in the United States. While the ICWAI credential alone does not meet the professional classification, the beneficiary may also be classified as a skilled worker.

However, 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 (Acting Reg'l Comm'r 1977). The Form ETA 750 in the instant case requires a bachelor's degree in computer science or management information systems. The beneficiary's bachelor's degree and master's degree are in commerce, and his ICWAI Associate Membership relates to accounting. 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 has submitted no evidence to demonstrate how a degree in commerce or accounting is equivalent to a degree in computer science or management information systems.

On appeal, counsel asserts that as certain U.S. institutions will accept a bachelor's degree in an unrelated area as a prerequisite for a master's degree program, the beneficiary's education is "a functional equivalent[t]." Although certain U.S. institutions may assess the beneficiary's education

differently, we must examine the beneficiary's education to determine whether it meets the terms of the labor certification in this particular case. It does not.

The employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS*, Civ. Act. No. 06-2158, 14 n. 7. USCIS may look to the petitioner's intent concerning the actual minimum educational requirements of the proffered position and evidence of how it expressed those requirements to DOL during the labor certification process.

The Form ETA 750 requires a bachelor's degree or equivalent in computer science or management information systems and two years of experience in the job offered. Counsel states on appeal that the petitioner believed the term "equivalent" encompassed those who did not possess a bachelor's degree in computer science or management information systems, but who did have work experience equivalent to such a degree. On appeal, the petitioner submits recruitment materials including advertisements placed in *The Star Ledger* on January 16, 2005, *Computerworld* on March 7, 2005, and *itjobs.net* on February 7, 2005. These advertisements stated that "Bach. Degree/Equiv. in Comp Sci/Mgmt Info Systems" was required. The ads also specified that the applicants should have experience with "in-house busn. applications using SQL, PL/SQL, Oracle, D2X w/implementation exp. in Oracle Fin'cl Acctg. Mgmt. Info Sys." The in-house posting stated that a "Bachelor's Degree or Equivalent in Computer Science or Management Information Systems plus two years of experience in this field" was required and that applicants should have experience with

SQL PLUS, PL-SQL, HTML, DHTML and Java programming, Implementation experience in Oracle financials software with strong functional experience in accounting, develop user interface utilizing developer 2000, design relational database management systems utilizing Oracle & export data from database to report writer; design and release detailed functional and technical specifications for reports, program modifications and data mapping for inbound and outbound interfaces, . . . test & develop applications for software quality assurance using automated & manual tools such as SQA Suite on different operating systems including Windows & Windows NT
...

The recruitment report dated March 23, 2005 stated that the petitioner "did not describe the duties involved[;] instead, [the petitioner] mentioned general skills needed to perform the duties" and received 12 resumes in response to the advertisement placed in *The Star Ledger*. The petitioner stated that it received no responses to the *itjobs.net* advertisement or the advertisement in *Computerworld*. Of the 12 applications received, the petitioner stated that 10 "clearly did not possess any requirements that [the petitioner] was looking for" and the other two applicants were interviewed. The two interviewees "did not have the experience mentioned in Form ETA Part A #13, especially experience in Oracle, Developer 2000 platform." The petitioner did not submit these applicants' resumes, so we are unable to determine how much experience they had, what kind of education they possessed, and whether the petitioner considered the candidates based on any equivalent education or experience. Although the job advertisements stated that a bachelor's degree equivalent was acceptable, the recruitment information

does not state that a degree in a subject other than computer science or management information systems was acceptable.

The beneficiary has a bachelor's degree in commerce and master's degree in commerce from India. USCIS must read the terms of the labor certificate as drafted. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm'r 1986). The petitioner, as discussed above, failed to provide evidence that it intended for the minimum requirements of the position to be different than the bachelor's degree in computer science or management information systems included on the Form ETA 750. The petitioner's intent must have been advertised to potential U.S. workers as well as communicated to DOL during the labor certification process; the petitioner presented no evidence that either occurred.

The evaluation from [REDACTED] states that the beneficiary's bachelor's and master's degrees in commerce, together with his over thirteen years of work experience, are the equivalent of a Bachelor of Science degree in Management Information Systems and a Master's of Business Administration degree with a concentration in Accounting in the United States. [REDACTED] states that he evaluated both the beneficiary's education and experience in reaching his conclusion. Specifically, he states that the beneficiary's bachelor of commerce degree would be equivalent to "three years of academic studies leading to a Bachelor's Degree in the field of Business Administration from an accredited institution of higher education in the United States." [REDACTED] stated that the beneficiary's passage of the Final Examination of the ICWAI "is analogous to the completion of a major concentration in Accounting at the baccalaureate or master's level." He concludes that the beneficiary's master of commerce degree in combination with the bachelor's degree and passage of the Final Examination of the ICWAI "indicate that [the beneficiary] attained the equivalent of a Master of Business Administration Degree, with a concentration in Accounting, from an accredited institution of higher education in the United States." [REDACTED] then analyzes the beneficiary's experience and concludes that the beneficiary's experience is

indicative of bachelor's level coursework in management information systems. Systems analysis and design, information technology, computer programming, software development, operating systems, database management systems, computer engineering, digital communication systems, and related subjects.

The evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1-B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). A bachelor's degree in computer science or management information systems is required by the Form ETA 750, and the evaluation of the beneficiary's educational credentials by [REDACTED] states that he has the equivalent of a Master of Business Administration Degree, with a concentration in accounting, from an accredited institution of higher education in the United States. The beneficiary does not have a bachelor's degree or equivalent in the fields of study listed on the labor certification. Lastly, if the beneficiary's experience is used for an education equivalency, it is unclear that the beneficiary would also have the required two years of experience required by the terms of the labor certification.

On appeal, the petitioner submits two additional credential evaluations from [REDACTED] and [REDACTED]. [REDACTED] states that the beneficiary's bachelor of commerce degree is equivalent to a U.S. four-year bachelor's degree. He also states that the beneficiary's master of commerce degree is the equivalent of a U.S. awarded master of business administration degree. In an effort to establish an equivalency between a degree in commerce and a concentration in computer science, [REDACTED] states that as certain U.S. master's programs in computer science do not require an undergraduate degree in computer science, the beneficiary's bachelor of commerce degree "should . . . be considered acceptable" for purposes of admission to a U.S. master's program in computer science and therefore, the beneficiary's bachelor of commerce degree is equivalent to a U.S. Bachelor of Science degree in Computer Science. However, the analysis in the instant case is not whether the beneficiary may utilize his bachelor of commerce degree to gain acceptance to a U.S. master's degree program in computer science. Instead, the analysis is whether the beneficiary met the minimum requirements for the proffered position as of the priority date. In this case, he did not.

[REDACTED] then discusses the beneficiary's master of commerce degree and concludes that the master of commerce degree is equivalent to a U.S. Master of Business Administration degree from a U.S. institution. [REDACTED] relies on a United Nations Educational Scientific Cultural Organization (UNESCO) document. In support of his evaluation he quotes Paragraph 1(e), which 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 an 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 the combination of a three-year degree with an unrelated advanced degree must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degrees are, in fact, the

⁹ [REDACTED] indicates he has a Doctorado en Humanidades from the Universidad San Juan de la Cruz, Costa Rica; a Master of Arts in History from Adam Smith University of Liberia; Bachelor from University of Cambridge; Master of Music in Performance Studies from Royal College of Music; Bachelor of Music from Royal College of Music, and Diploma of the Royal College of Music for Teachers.

foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.¹⁰

In fact, UNESCO's publication, "The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific" 82 (2d ed. 2004) (accessed on January 10, 2012 at <http://unesdoc.unesco.org/images/0013/001388/138853E.pdf> and incorporated into the record of proceedings), provides:

Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. UGC, AICTE and AIU are developing criteria and mechanisms regarding the same.

Id. at 84. (Emphasis added.)

goes on at length about Carnegie Units and Indian degrees in general, concluding that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate but makes no attempt to assign credits for individual courses. credibility is serious diminished as he completely

¹⁰ The evaluation references the UNESCO Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention on the recognition of qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same agreement. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. The United States was not a member of UNESCO between 1984 and 2002, and the Recommendation on the Recognition of Studies and Qualifications in Higher Education is not a binding legal agreement to recognize academic qualifications between UNESCO members. See <http://www.unesco.org> (accessed January 10, 2012).

distorts an article by [REDACTED] and [REDACTED]. Specifically, [REDACTED] asserts that this article concludes that because the United States is willing to consider three-year degrees from Israel and the European Union, "Indian bachelor degree-holders should be provided the same opportunity to pursue graduate education in the U.S." While this is the conclusion of the article, the specific means by which Indian bachelor degree holders might pursue graduate education in the United States provided in the discussion portion of the article in no ways suggests that Indian three-year degrees are, in general, comparable to a U.S. baccalaureate. Specifically, the article proposes accepting a first class honors three-year degree *following* a secondary degree from a CBSE or CISCE program *or* a three-year degree *plus* a post graduate diploma from an institution that is accredited or recognized by the NAAC and/or AICTE. The record contains no evidence that the beneficiary in this matter received his secondary degree from a CBSE or CISCE program. Moreover, he completed his three-year degree in the third division, not the first division.

Ultimately, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees. 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.¹¹ 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.¹² 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.¹³

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 January 10, 2012 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.*

The credential evaluation from [REDACTED] concluded that the beneficiary holds the equivalent of a "Bachelor's Degree in Computer Science" from a regionally accredited college or university in the United States based solely on the evaluation of the beneficiary's three-year bachelor of commerce degree. Although the evaluation purports to

¹¹ The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose motivation is "improving teaching and learning." See <http://www.carnegiefoundation.org/about-us/about-carnegie> (accessed January 10, 2012).

¹² <http://www.carnegiefoundation.org/faqs> (accessed January 10, 2012).

¹³ See <http://www.suny.edu/facultysenate/TheCarnegieUnit.pdf> (accessed January 10, 2012).

undertake a course-by-course evaluation, it is unclear how the beneficiary's bachelor of commerce degree is related to a degree in computer science as no courses listed on the transcript appear to be relevant. No computer courses are listed in [REDACTED] review of the beneficiary's courses. [REDACTED] assigned credits to the classes taken by the beneficiary "using the Carnegie Unit," assessing a total of 120 credit hours to the beneficiary. As stated above, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees. Moreover, the petitioner has not demonstrated that the use of this system produces consistent results, as would be expected of a workable system. [REDACTED] also cites to the UNESCO conventions referenced above and cites a number of British and United States colleges that accept three-year degree holders to their master's degree programs. It is interesting to note that [REDACTED] summary of some of these colleges' requirements indicate that the beneficiary would not be eligible. For example, the summary of the requirements for the University of Manchester indicate that holders of a three-year degree "who have obtained First Class at a reputable university" are eligible for the program. However, the beneficiary did not graduate in the first class; he graduated in the third class. In addition, [REDACTED] cites to the portion of the CGS' Research Report which states that only 56% of graduate schools in the United States would accept someone with the beneficiary's degree into their Master's program. The sources cited by [REDACTED] support the argument that some colleges and universities accept the three-year degree, but her sources do not support her ultimate conclusion that a three-year degree is equivalent to a United States baccalaureate.¹⁴ In a second evaluation, [REDACTED] concludes that the

¹⁴ The evaluation additionally cites to: Findings from the CGS International Graduate Admissions Survey, Phase III: Admissions and Enrollment, October 2006. The survey discusses international enrollment and what countries students mainly come from to study in the United States, as well as the issue of three-year degrees. The survey states that three-year degrees have become less controversial in terms of student graduate admissions of those with three-year degrees, however, acceptance of such degrees is not universal; The Lisbon Convention related to the Recognition of Qualifications concerning Higher Education in the European Region, dated April 11, 1997. The Lisbon Convention discusses recognition of qualifications issued by other parties to meet the general requirements for access to higher education, "unless a substantial difference can be shown between the general requirements for access in the Party in which the qualification was obtained and in the Party in which recognition of the qualification is sought;" the World Education News & Reviews, "Evaluating the Bologna Degree in the U.S.," dated March/April 2004. The article includes an assessment of the Bologna Process and terms "the new European bachelor's" degree based on three years as "quite distinct from its U.S. counterpart;" and Documentation of the Carnegie Unit and the US college credit hour, from "A Recipe for Incoherence in Student Learning," by [REDACTED] Samford University, September 2002." The article discusses the development of theoretical measures to gauge education. The article notes that the "Carnegie Unit" was defined and accepted in 1909, that it does not account for student learning accurately, and that it has become more complicated by distance learning.

We note that all the attached materials describe theoretical arguments for accepting three-year degrees, that there is a dispute within the academic community related to acceptance of three-year degrees for graduate admission, and that in the future with increasing numbers of international

beneficiary's master of commerce degree is equivalent to a Master of Business Administration degree in the United States.

We do not find the determinations of the conflicting credentials evaluations probative in this matter. The Form ETA 750 and the recruitment materials submitted by the petitioner require a bachelor's degree in computer science or management information systems, and nothing in the record of proceeding suggests that the petitioner would have accepted a degree in a different field of study. The evidence does not establish that the beneficiary's degrees in commerce and accounting are the same field of study as computer science or management information systems.

The beneficiary does not meet the minimum requirements for the offered position as set forth on the labor certification.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis). Regarding the two years of experience as a computer systems analyst required for the position, the regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies that:

(A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received.

The Form ETA 750B lists the beneficiary's experience as: October 2004 to March 2005, programmer analyst with the petitioner; August 2002 to October 2004, programmer analyst with [REDACTED] of NY; May 2001 to July 2002, programmer analyst with [REDACTED]; October 1999 to April 2001, senior Oracle consultant with [REDACTED]. The petitioner submitted experience letters from [REDACTED] A.D. [REDACTED] and [REDACTED]. The beneficiary failed to list this experience on Form ETA 750B. *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976) (the BIA in dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750, lessens the credibility of the evidence and facts asserted). As a result, we are unable to consider these letters. The petitioner submitted a letter from [REDACTED], stating that the beneficiary worked from October 1999 to June 21, 2000 as a senior consultant. This letter establishes less than nine months of experience.

students, the U.S. may need to accept or address the three-year degree issue. However, no study or report conclusively states that all three-year degrees should be accepted. Further, acceptance of the Bologna degree system in Europe is different than acceptance of three-year Indian or Australian degrees in the United States; in the context of employment-based immigrant visa petitions filed with USCIS.

The petitioner submitted a letter stating that it employed the beneficiary from October 2004, but as the priority date is March 24, 2005, this letter demonstrates less than six months of experience. Thus, the petitioner has not demonstrated that the beneficiary had the required two years of experience as a computer systems analyst as of the priority date.

In addition to failing to demonstrate that the beneficiary has the required two years of experience, the petitioner has not demonstrated that the beneficiary has all of the skills required to perform the actual duties of the proffered position listed on Form ETA 750, Part A.13. Specifically, the experience letters did not establish the beneficiary's experience designing and developing net enabled modules for inventory and order management systems, online import shipment tracking system, and online distribution tracking system utilizing SQL PLUS, PL-SQL, HTML, DHTML & Java programming. The letters also did not state that the beneficiary had experience designing and releasing detailed functional and technical specifications for reports, program modifications and data mapping for inbound and outbound interfaces; and preparing flowcharts and diagrams to illustrate the sequence of steps programs must follow including the logical operations involved. The letters made no mention of any experience describing program development, logic, coding and corrections and extended objects and third party components or testing and developing applications for software quality assurance including Windows & Windows NT. The letters did not state that the beneficiary had experience developing manuals for users to describe steps to be followed for installation and system requirements including trouble-shooting techniques. The petitioner has not shown that the beneficiary meets the experience requirements of the labor certification, and has not established that the beneficiary has the skills required to perform the duties of the proffered position.

The beneficiary fails to meet the minimum requirements of the labor certification, and, thus, does not qualify for preference visa classification under section 203(b)(3) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. 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.