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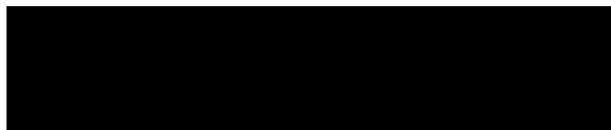
IN RE:

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,

Kerrin S. Poulos for

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition and a subsequent motion to reopen and reconsider. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a business services company. It seeks to employ the beneficiary permanently in the United States as a computer programmer. As required by statute, a Form ETA 750, 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 or experience stated on the labor certification. The petitioner filed a motion to reopen or reconsider the director's decision. The director reopened the decision and determined that the petitioner satisfied the beneficiary's experience but that the petitioner did not demonstrate that the beneficiary had the minimum level of education stated on the labor certification.¹

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *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 December 17, 2001. The Immigrant Petition for Alien Worker (Form I-140) was filed on November 26, 2007.

¹ On appeal, counsel argued that the beneficiary had the required three years of experience as well as the specific program experience required by the terms of the labor certification. The director's decision on the petitioner's motion to reopen and reconsider states that the petitioner demonstrated that the beneficiary had the required experience. We agree with the director's decision that the petitioner demonstrated that the beneficiary had the required experience, and therefore, this decision will discuss the beneficiary's experience only generally.

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).

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

Involved in Designing and Development of Client/Server Computer programs. Applied knowledge of Programming techniques and computer systems using Java, Visual Basic and C. Used UML for designing of these software.

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	8
High school	4
College	4
College Degree Required	BS
Major Field of Study	Computer Science Engineering

Experience:

Job Offered	3 years
(or)	
Related Occupation	3 years Software Development

Block 15:

Other Special Requirements: Experience with Java, Visual Basic, UML, and C.

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 eight years of grade school, four years of high school, and four years of college culminating in a Bachelor of Science degree in Computer Science

Engineering plus three years of experience in the job offered as a computer programmer III or in the related occupation of software development. The position also requires experience with Java, Visual Basic, UML and C.

On the Form ETA 750B, signed by the beneficiary on April 3, 2001, the beneficiary represented that the highest level of achieved education related to the requested occupation was a Bachelor of Science degree in Mechanical Engineering from Arulmigu Kalasalingam [sic] College of Engineering in India.³

In support of the beneficiary's educational qualifications, the petitioner submitted a Diploma from Madurai Kamaraj University stating that the beneficiary graduated with a Bachelor of Engineering in Mechanical Engineering in April 1993. The petitioner also submitted a Microsoft Certified Professional Transcript stating that the beneficiary completed a course in Visual Basic 5.0 programming in May 1999, a Sun Certified Programmer for the Java 2 Platform Examination Score Report, a TULEC Computer Education certificate stating that the beneficiary completed a course on Unix, and a Certificate that the beneficiary completed the courses to be a Microsoft Certified Professional. The petitioner additionally submitted two evaluations of the beneficiary's education. The evaluations describe the beneficiary's diploma from Madurai Kamaraj University as a Bachelor of Science degree in Computer Science Engineering and conclude that it is equivalent to a Bachelor of Science degree received from an accredited institution in the United States.

The director denied the petition on January 25, 2008. He determined that the beneficiary did not meet the terms of the labor certification which required a four-year Bachelor of Science degree in Computer Science Engineering, three years of experience as a computer programmer or software development, and experience with "Java, Visual Basic, UML, and C." On February 19, 2008, the petitioner filed a motion to reopen and reconsider the director's decision. The director granted the petitioner's motion to reconsider and reopen the decision and affirmed the denial of the petition, stating that the petitioner satisfied the experience requirements, but that the evidence submitted did not establish that the beneficiary had the required education as of the priority date.

The occupational classification of the offered position is not one of the occupations statutorily defined as a profession at section 101(a)(32) of the Act, which states: "The term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

DOL assigned the code of 15-1021, computer programmer III, to the proffered position. According to DOL's public online database at <http://www.onetonline.org/link/summary/15-1131.00> (accessed November 30, 2011) 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.

³ Arulmigu Kalasalingam College of Engineering is affiliated with Maduraj Kamaraj University in India.

DOL assigns a standard vocational preparation (SVP) range of 7.0-<8.0 to the occupation, which means that “Most of these occupations require a four-year bachelor's degree, but some do not.” See <http://online.onetcenter.org/link/summary/15-1131.00> (accessed November 30, 2011). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A considerable amount of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified.

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

See id. 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)(l)(3)(ii)(B) states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or 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 petitioner's offered 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.

Initially, 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).⁴ *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

⁴ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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:

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 had a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." (Emphasis added.)

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (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 1289m 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement in of a "degree" for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate degree, we would not consider education earned at an institution other than a college or university.

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. 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 expericnce and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree,” from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional as he does not have the minimum level of education required for the foreign equivalent of a bachelor’s degree.

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that 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).

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 equivalent is required. *Snapnames.com, Inc.* at *17, 19.

In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner’s intent regarding educational equivalence is clearly stated on the Form ETA 750 and does not include alternatives to a four-year bachelor’s degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language of those requirements does not support

the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008) (upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this case, the Form ETA 750 does not specify an equivalency to the requirement of a four-year Bachelor of Science degree in Computer Science Engineering.

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

The petitioner submitted two evaluations. The evaluation from [REDACTED] of the European-American University considered the beneficiary's Bachelor of Engineering (Mechanical) as the equivalent of a U.S. bachelor's degree in Computer Science Engineering. [REDACTED] breaks down the beneficiary's subjects into courses, practicals, and electives and awards credits for each course, practical, and elective, concluding that the beneficiary achieved 120 "contact hours using the Carnegie Unit." [REDACTED] does not explain how he determined the individual course credit numbers, which vary from 2.1 to 4.1. Specifically, the beneficiary's transcript does not provide any information as to classroom hours or credits. In addition, the evaluation does not explain how those courses completed in the pursuit of a Bachelor of Engineering (Mechanical) would relate to courses completed in the course of a degree in Computer Science Engineering.

The evaluation from [REDACTED] also states that the beneficiary's Bachelor of Engineering (Mechanical) is the equivalent of a Bachelor of Science degree in computer science engineering. He concludes that, as the beneficiary took certain classes including "Computer Programming, Mathematics I-IV, Industrial Electronics and Control, Statistics and Computational Methods, Electronics Laboratory, Production Technology I-III, Instrumentation, and Computer Aided Design," the beneficiary's degree is equivalent to a Bachelor of Science in Computer Science Engineering. [REDACTED] relies on a United Nations Education Scientific and 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 a degree in one field can be considered the equivalent of a degree in another field. More significantly, the recommendation does not define “comparable qualification.” At the heart of this matter is whether the beneficiary’s degree in mechanical engineering is, in fact, the foreign equivalent of a U.S. baccalaureate in computer science engineering. Nothing in the document suggests that a degree in one area should be considered the equivalent of a degree in a different area.^{5,6}

On appeal, counsel states that the director erred in stating that the courses taken by the beneficiary were not computer science engineering classes because they lacked the word “computer” in the title. To demonstrate that the classes taken by the beneficiary were typical of computer science engineering majors, the petitioner submitted information from U.S. universities concerning the requirements of their computer science programs. Although those university programs indicate that certain electronics and mathematics classes are required for computer science majors, they do not indicate that only the basic classes in electronics and mathematics are required. Instead, the requirements from Vanderbilt University for a major in Computer Engineering state that 127 hours

⁵ 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 April 19, 2011).

⁶ The evaluation also cites to 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.” Lisbon Convention, Article IV.1.

total are required, including 18 hours Mathematics, 6 hours Engineering Fundamentals, 26 hours Computer Engineering Core, and 18 hours Computer Engineering Electives. Vanderbilt also requires certain classes such as Software/Problem Solving, Hardware/Systems, and Foundations. The requirements of Temple University's Computer Science program also require certain courses including programming methodology, data structures, and required systems courses that include "the Java programming language, and object-oriented programming techniques." The Bridgeport University dual degree program in Computer Science and Mechanical Engineering requires five specific computer science courses in addition to mechanical engineering courses and electives. The course list from the Massachusetts Institute of Technology in Electrical Engineering and Computer Science requires certain specific programming, software development, and computer language classes.

The beneficiary's course list includes mathematics classes, engineering classes, and a class in Computer Programming and Computer Aided Design. Nothing in the record demonstrates that these two classes would be extensive enough to satisfy the requirements of any of the schools for which information was submitted. Instead, the beneficiary's transcript demonstrates that he may have taken classes that would be sufficient to meet the other requirements, including engineering and mathematics, for a computer science major, but that he did not take classes in all areas required for computer science engineering majors at these institutions.

As the evaluations do not explain how a degree in mechanical engineering is the equivalent of a degree in computer science engineering, it is necessary to determine how the petitioner advertised the job requirements to any potential U.S. workers.⁷

The Form ETA 750 does not state that a degree in any field other than computer science engineering would be acceptable. The petitioner submitted evidence of its recruiting efforts. The advertisements placed in *The Washington Post* state that the position requires an "undergraduate degree . . . with a major field of study in Computer Science Engineering/Applications or equivalent." The in-house advertisement did not contain any education requirements and simply required experience with Java, Virtual Basic, UML and C. There are discrepancies in the petitioner's intent regarding its educational requirements for the job based on these advertisements. The recruitment reports accompanying the advertisements state that no applications for the position were submitted. On appeal, the petitioner submitted a letter from its Vice President, Administration that states that the

⁷ On appeal, counsel states that the denial of the petition was based on an opinion that "the beneficiary's course work was not truly computer science/engineering related, ignoring two expert opinion evaluations and the UNESCO . . . recommendations." 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. 1988). The evidence submitted by the petitioner has been considered in its entirety; although the conclusion reached in this opinion differs from that of the evaluations, the evaluations and the UNESCO treaty were considered in this opinion.

petitioner's intent

was simply to require a Bachelor of Science degree with a major field of study in computer science engineering/applications or equivalent. . . . [the petitioner] did not limit [its] consideration to applicants with U.S. degrees in computer science engineering, rather welcomed and considered applicants with foreign bachelor's degrees in computer science engineering/applications and related fields.

Although the petitioner may have viewed the position as open to anyone with a degree in a "related field," it must have conveyed that actual requirements for the position in the advertisement including the relevant education and experience. Although the advertisements in the *Washington Post* stated "or equivalent," they contained no indication of what would be considered an equivalent. Further, the in-house posting did not list any educational requirements. As the wording of the job advertisements do not convey what the requirements for the position were, they were incapable of advising potentially qualified U.S. workers of the educational requirements for the position.

The beneficiary does not meet the terms of the labor certification, so the petition cannot be approved. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification). Specifically, the labor certification requires four years of university study culminating in a degree in Computer Science Engineering. The beneficiary's degree in Mechanical Engineering does not meet these specifications and there is insufficient evidence in the record to demonstrate that the beneficiary meets any sort of equivalency based on a combination of coursework, training, and/or experience. The petitioner failed to submit sufficient evidence to overcome these deficiencies.

Even if we considered the petition under the skilled worker category, the beneficiary does not meet the terms of the labor certification, and the petition would be denied on that basis as well. *See* 8 C.F.R. § 204.5(l)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification). Specifically, the labor certification requires a four-year bachelor's degree in computer science engineering. The labor certification does not state that any type of equivalency would be accepted. The beneficiary's degree in mechanical engineering and/or training or experience does not meet the specifications of a four-year, single-source bachelor's degree in Computer Science Engineering. Therefore, the petitioner has failed to demonstrate that the beneficiary has the education required for the position offered.

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.