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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: JUN 20 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 AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen with the field office or service center that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner is an importer and wholesaler of consumer goods. It seeks to employ the beneficiary permanently in the United States as a business analyst. As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification approved by the Department of Labor (the DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary 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 record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

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). The priority date of the petition is September 18, 2002, which is the date the Form ETA 750 was accepted for processing by the DOL. *See* 8 C.F.R. § 204.5(d).³ The Immigrant Petition for Alien Worker (Form I-140) was filed on May 23, 2006.

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

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

³ If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

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

Complete Business Analysis, revenue generation and designing exit strategies, analyzing sales and marketing reports, make forecasts and projections, make decisions on budget for advertisement, marketing, etc; define business rules and analyze current operational procedures, identify problems, document business transactions. Interpret data concerning expenditure, price and future trends through statistical reports; recommend improvements of operation; develop financing plans; prepare reports.

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

Block 14:

EDUCATION:

Grade School: No requirement listed

High School: No requirement listed

College: "X"

College Degree Required: Bachelor's

Major Field of Study: Business Administration, Marketing, Math, or Science

TRAINING: No requirement listed

EXPERIENCE: 2 years in the related occupation of marketing, business, or finance

Block 15:

OTHER SPECIAL REQUIREMENTS: No other requirements listed

Therefore, the labor certification requires an individual with a U.S. bachelor's degree or foreign equivalent in business administration, marketing, math, or science and two years of experience in the related occupation of marketing, business, or finance.

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's Bachelor of Science diploma and transcripts from [REDACTED]. Further, the record contains copies of three certificates dated February 9, 1993, May 16, 1999, and November 4, 2000, respectively, reflecting that the beneficiary had successfully completed a course on Export Marketing conducted by the [REDACTED] a "Programme on Managerial Strategies for the Twenty-First Century" conducted jointly by the Indian Institute of Management and [REDACTED] and an "International Programme on Marketing Strategies For Competitive Advantage" conducted jointly by the Indian Institute of Management and [REDACTED]. The certificates contained in the record provide no indication that the beneficiary received any college or university degree as a result of these studies.

The record also contains evaluations of the beneficiary's credentials prepared respectively by [REDACTED] for [REDACTED] and [REDACTED] for [REDACTED] both of which were prepared on December 29, 2006, as well an evaluation dated March 22, 2000 that was prepared by [REDACTED] for [REDACTED]. The Kersey and Danzig evaluations conclude that the beneficiary's three-year bachelor of science degree from Gujarat University is equivalent to a four-year bachelor of science degree from an accredited post-secondary institution in the United States. The [REDACTED], evaluation, however, concludes that the three-year degree from Gujarat University is equivalent to "3 years of course work and not 4 years" in the United States. [REDACTED] evaluation concludes that the combination of the beneficiary's three-year degree, three certificate courses, and twenty years of work experience in sales and marketing is equivalent to a U.S. bachelor's degree. Accordingly, the three evaluations are inconsistent with each other. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The director denied the petition on April 9, 2007. The director determined that the beneficiary's three-year bachelor of science degree from Gujarat University could not be accepted as a foreign equivalent degree to a four-year U.S. bachelor's degree in business administration, marketing, math, or science.

On appeal, counsel submitted new evaluations of the beneficiary's credentials prepared by [REDACTED] and [REDACTED] respectively, on April 20, 2007. In these new evaluations, [REDACTED] again concluded that the beneficiary's three-year bachelor of science degree from Gujarat University is equivalent to a "Bachelor of Science, representing 120 semester hours," from an accredited post-secondary institution in the United States.

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

Part A of the Form ETA 750 indicates that the DOL assigned the occupational code of 100.117-014 with accompanying job title "business operations specialist" to the proffered position of business analyst. The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the applicable occupational classification code is noted on the labor certification form. O*NET is the current occupational classification system used by the DOL. Located online at <http://online.onetcenter.org>, O*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O*NET incorporates

the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States. *See* <http://www.bls.gov/soc/socguide.htm>. Prior to O*NET, the DOL used the Dictionary of Occupational Titles (DOT) occupational classification system. The O*NET website contains a crosswalk that translates DOT codes into SOC codes. *See* <http://online.onetcenter.org/crosswalk/DOT>. However, in the instant case, when the DOT occupational code of 100.117-014 is entered into the O*NET crosswalk, the crosswalk lists “Library Consultant” as the job title for this DOT occupational code and a corresponding SOC occupational code of 13-1199.00 with occupational title of “Business Operations Specialists, All Other.” In its summary report for “Business Operations Specialists, All Other,” O*NET states the following:

“All Other” title represents occupations with a wide range of characteristics which do not fit into one of the detailed O*NET-SOC occupations. O*NET data is not available for this type of title. For more detailed occupations under this title see below.

O*NET then lists these SOC codes and corresponding occupation titles: 13-1199.01-Energy Auditor, 13-1199.02-Security Management Specialists, 13-1199.03-Customs Brokers, 13-1199.04-Business Continuity Planners, 13-1199.05-Sustainability Specialists, and 13-1199.06-Online Merchants. Clearly, the SOC codes and occupational titles found on the O*NET crosswalk do not correspond to the proffered position of business analyst. An examination of the duties of the proffered position of business analyst using the O*NET online database, its listing of occupational titles, and the listing of tasks for each respective occupational title, finds that the proffered position most closely corresponds to a combination of management analyst and market research analyst.

O*NET classifies the occupational title of management analyst under the SOC code 13-1111.00 and the occupational title of market research analyst under the SOC code 13-1161.00. The O*NET online database states that these occupations fall within Job Zone Four, requiring “considerable preparation” for the occupation type closest to the proffered position.

The DOL assigns a standard vocational preparation (SVP) of 7.0 to <8.0 to the occupations, which means that “[M]ost of these occupations require a four-year bachelor’s degree, but some do not.” While O*NET does not provide a statistical breakdown based upon the degree type held by individuals employed in the occupation of management analyst, O*NET reflects that 71% of individuals employed in the occupation of market research analyst hold a bachelor’s degree, 25 % hold a master’s degree, and 4% hold a doctoral or professional degree. Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

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

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

See id.

The proffered position of business analyst requires a bachelor's degree in business administration, marketing, math, or science, and 2 years of experience in marketing, business, or finance which is more than the minimum required by the regulatory guidance for professional positions found at 8 C.F.R. § 204.5(l)(3)(ii)(C). Thus, combined with the DOL's classification and assignment of educational and experiential requirements for the occupation, the certified position must be considered as a professional occupation.

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

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

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

On November 10, 2011, the AAO issued a Notice of Derogatory Information and Request for Evidence (NDI/RFE) to the petitioner. In this request, the AAO noted that there was no evidence in the record of proceeding that the beneficiary ever enrolled in classes resulting in the award of a degree beyond his academic studies at Gujarat University in India. The AAO also noted that the petitioner did not specify on the Form ETA 750 that the minimum academic requirements of a bachelor's degree in business administration, marketing, math, or science might be met through a combination of lesser degrees and/or a quantifiable amount of work experience which assumes that the skilled worker classification is even applicable. The AAO further advised that according to the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO), the beneficiary's Bachelor of Science diploma from Gujarat University is equivalent to three years of undergraduate study in the United States and that the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually less than a four-year U.S. bachelor's degree or its foreign equivalent and/or a quantifiable amount of work experience when the labor

market test was conducted which, again, assumes the applicability of the skilled worker classification.

In response to the NDI/RFE, counsel submits a statement in which he objects to the use of AACRAO as an authority to determine whether the beneficiary's three-year bachelor of science degree from Gujarat University is the foreign equivalent to a four-year U.S. bachelor's degree. Counsel provides a statement from the petitioner's president and chief executive officer in which he requests that the evaluation dated March 22, 2000, which was prepared by [REDACTED] for Elegant Business Services, Inc., be withdrawn from the file and revoked because it had been prepared for the purpose of the beneficiary's separate H1B visa petition. Counsel includes copies of the documentation prepared in accordance with the prior DOL labor certifications regulations at 20 C.F.R. § 656 (2004), including a signed recruitment report, the prevailing wage determination, online and print recruitment conducted for the position, the posted notice of the filing of the labor certification, and resumes received in response to the recruitment efforts. Counsel submits a copy of the meeting notes from the American Immigrant Lawyers Association (AILA)/Nebraska Service Center (NSC) Liaison Meeting on April 30, 2008, copies of Forms W-2, Wage and Tax Statement, issued by the petitioner to the beneficiary in 2002, 2003, 2004, 2008, 2009, and 2010, and copies of the petitioner's Forms 1120S, U.S. Income Tax Return for an S Corporation, for 2007, 2008, 2009, and 2010.

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

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

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

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

It is left to United States Citizenship and Immigration Services (USCIS) to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by Federal Circuit Courts:

There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority

to make the two determinations listed in section 212(a)(14).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 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).⁵

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

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

⁵ The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). See generally *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

Tongatapu Woodcraft Hawaii, Ltd. v. Feldman, 736 F. 2d 1305, 1309 (9th Cir. 1984).

experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

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

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Id.* at 11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Id.* at 14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at 17, 19. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the Form ETA 750 and does not include alternatives to a four-year bachelor's degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at 7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this matter, the Form ETA 750 does not specify an equivalency to the requirement of a bachelor's degree in business administration, marketing, math, or science.

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

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

Furthermore, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of “an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study.” (Emphasis added.) Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word “degree” in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress’ narrow requirement of a “degree” for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced “the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning.” Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate “degree” and be a member of the professions reveals that member of the profession must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require “a” degree that is the foreign equivalent of a U.S. baccalaureate, we could not consider education earned at an institution other than a college or university.

Moreover, as advised in the NDI/RFE issued to the petitioner by this office, the AAO has reviewed EDGE created by the AACRAO. According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php>. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials.⁶ If placement

⁶ 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.

recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁷

EDGE's credential advice provides that a 3-year Bachelor of Science degree from Gujarat University in India is comparable to "two to three years of university study in the United States. Credit may be awarded on a course-by-course basis."

As previously discussed, the record contains evaluations of the beneficiary's credentials prepared respectively by [REDACTED] and [REDACTED] for [REDACTED] [REDACTED] as well as an evaluation dated March 22, 2000 that was prepared by [REDACTED].

The [REDACTED] evaluations conclude that the beneficiary's three-year bachelor of science degree from Gujarat University is equivalent to a four-year bachelor of science degree from an accredited post-secondary institution in the United States. The Elegant Business Services, Inc., evaluation, however, concludes that the three-year degree from Gujarat University is equivalent to "3 years of course work and not 4 years" in the United States. The Elegant Business Services, Inc. evaluation concludes that the combination of the beneficiary's three-year degree, three certificate courses, and twenty years of work experience in sales and marketing is equivalent to a U.S. bachelor's degree. Accordingly, the three evaluations are inconsistent with each other. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

In the new evaluations of the beneficiary's credentials prepared by [REDACTED] respectively, on April 20, 2007, [REDACTED] both concluded that the beneficiary's three-year bachelor of science degree from Gujarat University is equivalent to a "Bachelor of Science, representing 120 semester hours," from an accredited post-secondary institution in the United States.

⁷ 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.

█ 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 distorts an article by █. Specifically, █ 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 way 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, the record lacks evidence that the beneficiary completed a post-graduate degree. Thus, █ reliance on this article is disingenuous.

█ reliance on *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. Nov. 30, 2006) is equally misplaced. In that case, the alien not only had a credential beyond a three-year degree, the judge determined that even with that extra credential, the alien was only eligible as a skilled worker pursuant to section 203(b)(3) of the Act, and *not* as either a professional or an advanced degree professional pursuant to section 203(b)(2) of the Act. *Id.*

Ultimately, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees. The petitioner has submitted materials about the unit posted at "Wikipedia." Online content from "Wikipedia" is subject to the following general disclaimer:

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on May 21, 2012. Reliance on *Wikipedia* is not favored by federal courts. See *Badasa v. Mukasey*, 540 F. 3d 909 (8th Cir. 2008). Moreover, the petitioner has not demonstrated that the use of this system produces consistent results, as would be expected of a workable system.

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.⁸ 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.⁹ 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.¹⁰

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> [REDACTED] accessed on June 5, 2012, and incorporated into the record of proceedings, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year’s end multiplied by five equals 30 hours. *Id.*

[REDACTED] also relies on an article he coauthored with [REDACTED]. The record contains no evidence that this article was published in a peer-reviewed publication or anywhere other than the Internet. The article includes British colleges that accept three-year degrees for admission to graduate school but concedes that “a number of other universities” would not accept three-year degrees for admission to graduate school. Similarly, the article lists some U.S. universities that accept three-year degrees for admission to graduate school but acknowledges that others do not. In fact, the article concedes:

None of the members of N.A.C.E.S. who were approached were willing to grant equivalency to a bachelor’s degree from a regionally accredited institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so.

In this process, we encountered a number of the objections to equivalency that have already been discussed.

[REDACTED] commented thus,

⁸ 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 November 30, 2011).

⁹ <http://www.carnegiefoundation.org/faqs> (accessed November 30, 2011).

¹⁰ See <http://www.suny.edu/facultysenate/TheCarnegieUnit.pdf> (accessed November 30, 2011).

“Contrary to your statement, a degree from a three-year “Bologna Process” bachelor’s degree program in Europe will NOT be accepted as a degree by the majority of universities in the United States. Similarly, the majority do not accept a bachelor’s degree from a three-year program in India or any other country except England. England is a unique situation because of the specialized nature of Form VI.”

* * *

International Education Consultants of Delaware, Inc., raise similar objections to those raised by ECE.,

“The Indian educational system, along with that of Canada and some other countries, generally adopted the UK-pattern 3-year degree. But the UK retained the important preliminary A level examinations. These examinations are used for advanced standing credit in the UK; we follow their lead, and use those examinations to constitute the an [sic] additional year of undergraduate study. The combination of these two entities is equivalent to a 4-year US Bachelor’s degree.

The Indian educational system dropped that advanced standing year. You enter a 3-year Indian degree program directly from Year 12 of your education. In the US, there are no degree programs entered from a stage lower than Year 12, and there are no 3-year degree programs. Without the additional advanced standing year, there’s no equivalency.

Finally, these materials do not examine whether those few U.S. institutions that may accept a three-year degree for graduate admission do so on the condition that the holder of a three-year degree complete extra credits.

Also in support of the evaluations, the petitioner submitted the “Findings from the 2006 CGS International Graduate Admissions Survey.” On page 11 of this document, it is acknowledged that 55 percent of all institutions in the United States do not accept three-year degrees from outside of Europe. The survey does not reflect how many of the institutions that do accept three-year degrees from outside of Europe do so provisionally. If the three-year Indian baccalaureate were truly a foreign equivalent degree to a U.S. baccalaureate, it can be expected that the vast majority of U.S. institutions would accept these degrees for graduate admission without provision.

Finally, [REDACTED] relies on a UNESCO document. In support of his evaluation, [REDACTED] submitted 138 pages of UNESCO materials, only two of which are relevant. The relevant language relates to “recognition” of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

‘Recognition’ of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or

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

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define “comparable qualification.” At the heart of this matter is whether the beneficiary’s degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

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 June 5, 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.)

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert’s qualifications or the relevance, reliability, and probative value of the

testimony). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). The evaluations of record are not consistent and provide little support for their determination as to the number of credits.

Given the serious inconsistencies in credits discussed above and between the statements of [REDACTED] and the remaining evidence of record, we have reviewed EDGE created by AACRAO. As noted previously, in the section related to the Indian educational system, EDGE provides that a Bachelor of Science "represents the attainment of a level of education comparable to two to three years of university study in the United States." This information is inconsistent with the information contained in the [REDACTED] evaluations and [REDACTED] evaluations. However, the information provided by EDGE relating to a Bachelor of Science in the Indian educational system is consistent with the evaluation from Elegant Business Services, Inc., which concluded that the beneficiary's three-year degree from Gujarat University is equivalent to "3 years of course work and not 4 years" in the United States. Although the petitioner's president and chief executive officer requests that the Elegant Business Services, Inc. be withdrawn in these instant proceedings, such request appears to have been motivated by the fact that this evaluation is consistent with the findings expressed by EDGE relating to an Bachelor of Science in the Indian educational system rather than being consistent with the opinions expressed in the [REDACTED] evaluations. The petitioner makes no attempt to explain why the Elegant Business Services, Inc. is wrong.

We have also reviewed AACRAO's Project for International Education Research (PIER) publications: the *P.I.E.R. World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* (1997). We note that the 1997 publication incorporates the first degree and education degree placements set forth in the 1986 publication. The *P.I.E.R. World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* at 43. As with EDGE, these publications represent conclusions vetted by a team of experts rather than the opinion of an individual.

One of the PIER publications also reveals that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. *A P.I.E.R. Workshop Report on South Asia* at 180 explicitly states that "transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year." The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate "may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis." This information seriously undermines the [REDACTED]

submitted, all of which attempt to assign credits hours for the beneficiary's three-year baccalaureate that are close to or beyond the 120 credits typically required for a U.S. baccalaureate.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92.

Even if the petition qualified for skilled worker consideration, 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(1)(3)(ii)(B) (requiring evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification).

The Form ETA 750 does not provide that the minimum academic requirements of a bachelor's degree in business administration, marketing, math, or science might be met through three years of college or some other formula other than that explicitly stated on the Form ETA 750. The copies of the notice(s) of Internet and newspaper advertisements, provided with the petitioner's response to the NDI/RFE issued by this office, are of minimal probative value as these announcements provide a very general description of the duties of the proffered position of business analyst without specifying whether any degree or education is required. Nevertheless, the posted notice of the filing of the labor certification with the DOL specifically states that the requirements of the proffered position of business analyst are a "[B]achelor's degree in Business Administration or Marketing or Math or Science and two years of experience," without advising any otherwise qualified U.S. workers that the educational requirements for the job may be met through a quantitatively lesser degree or defined equivalency.

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

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

ORDER: The appeal is dismissed.