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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

DATE: OFFICE: NEBRASKA SERVICE CENTER FILE:

OCT 10 2012

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

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

Thank you,


Perry Rhew

Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a software development and computer consulting company. It seeks to permanently employ the beneficiary in the United States as a programmer analyst. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is March 23, 2005. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess a U.S. bachelor's degree or foreign equivalent in MIS, computer science, engineering, or math as required by the terms of the labor certification.

The record shows that the appeal is properly filed 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 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.¹

At the outset, it is important to discuss the respective roles of the DOL and U.S. Citizenship and Immigration Services (USCIS) in the employment-based immigrant visa process. As noted above, the labor certification in this matter is certified by the DOL. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, which provides:

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

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 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).

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 the DOL, or the 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).² *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.

² Based on revisions to the Act, the current citation is section 212(a)(5)(A).

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the 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 the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and beneficiary are eligible for the requested employment-based immigrant visa classification.

In the instant case, the petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A).³ The AAO will first consider whether the petition may be approved in the professional classification.

³ Employment-based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. The petitioner indicates the requested classification by checking a box on the Form I-140. The Form I-140 version in effect when this petition was filed did not have separate boxes for the professional and skilled worker classifications. In the instant case, the petitioner selected Part 2, Box e of Form I-140 for a professional or skilled worker. The petitioner did not specify elsewhere in the

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in part:

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.

Section 101(a)(32) of the Act defines the term “profession” to include, but is not limited to, “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” If the offered position is not statutorily defined as a profession, “the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.” 8 C.F.R. § 204.5(l)(3)(ii)(C).

In addition, the job offer portion of the labor certification underlying a petition for a professional “must demonstrate that the job requires the minimum of a baccalaureate degree.” 8 C.F.R. § 204.5(l)(3)(i)

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Therefore, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor’s degree as a minimum for entry; the beneficiary possesses a U.S. bachelor’s degree or foreign equivalent degree from a college or university; the job offer portion of the labor certification requires at least a bachelor’s degree or foreign equivalent degree; and the beneficiary meets all of the requirements of the labor certification.

It is noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional. 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

record of proceeding whether the petition should be considered under the skilled worker or professional classification. After reviewing the minimum requirements of the offered position set forth on the labor certification and the standard requirements of the occupational classification assigned to the offered position by the DOL, the AAO will consider the petition under both the professional and skilled worker categories.

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).

It is significant that both section 203(b)(3)(A)(ii) of the Act and the 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' requirement of a single "degree" for members of the professions is deliberate.

The regulation also 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." 8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). 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) of the Act (relating to aliens of exceptional ability). However, for the professional category, it is clear that the degree must be from a college or university.

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008)(for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree).

Thus, the plain meaning of the Act and the regulations is that the beneficiary of a petition for a professional must possess a degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree.

In the instant case, the labor certification states that the minimum educational requirement is a bachelor's degree with a major field of study of MIS, computer science, engineering, or math. The labor certification does not state that the educational requirements of the offered position could be met with a bachelor's degree in a field of study other than MIS, computer science, engineering, or math.

The labor certification states that the beneficiary possesses a bachelor's degree in commerce from [redacted] completed in 1990 and a master's degree in commerce from [redacted]

Page 7

[REDACTED], completed in 1992.

The record contains a copy of the beneficiary's Bachelor of Commerce diploma, Master of Commerce diploma, and transcripts from [REDACTED]. The record also contains several training certificates and diplomas, including:

- Diploma in Air Ticketing, completed August 5, 1989 from [REDACTED]
- Post Graduate Diploma in Computer Applications, completed June 8, 1993 from [REDACTED]
- Diploma in Software Technology, completed March 17, 1997 from [REDACTED]

The record contains the following evaluations of the beneficiary's credentials:

- An evaluation prepared by [REDACTED] on June 19, 2007
- An evaluation prepared by [REDACTED] on February 16, 2009
- An undated evaluation prepared by [REDACTED]

On April 4, 2012, the AAO issued a Request for Evidence (RFE), notifying the petitioner that there were inconsistencies in the conclusions of the evaluations. On May 17, 2012, the AAO received a response. In a letter dated May 16, 2012, counsel states:

A review of the materials in the record, cited by the AAO as 'evaluations' of Ms. Puppala's educational credentials reflects that there is in fact only one opinion that qualifies as such, thus eliminating the existence of any questions of inconsistency. The AAO notes that of the three opinions submitted, one was from [REDACTED] and the other is from [REDACTED]. Neither of these warrant consideration as professional evaluations of education credentials given that their respective opinions are equally premised on legally erroneous notions cited by the AAO itself on multiple occasions... Based on these legal errors that the AAO has identified, and given the fact that the conclusions drawn by both [REDACTED] and [REDACTED] it is clear that neither can be given any credibility that would warrant questioning the conclusions reached by [REDACTED], PhD, of [REDACTED] on reviewing the Beneficiary's educational credentials...

The AAO acknowledges counsel's withdrawal of the [REDACTED] evaluations in response to the April 4, 2012 RFE. The remaining evaluation of the beneficiary's credentials, prepared by [REDACTED] concludes that the beneficiary's Bachelor of Commerce from [REDACTED] is equivalent to "... 3 years of academic studies (90 credits) toward a Bachelor's Degree in Accounting and also equivalent to 65 credits of academic studies toward a Bachelor's Degree in Computer Science from [REDACTED]".

an accredited college or university in the United States of America.” The evaluation also states that the beneficiary’s Master of Commerce from [REDACTED] is equivalent to “... a Bachelor’s Degree in Accounting and also equivalent to 15 credits of academic studies towards a Bachelor’s Degree in Computer Science.” Additionally, based on a combination of the beneficiary’s degrees and training certificates and diplomas, the evaluation concludes that the beneficiary has the equivalent of a bachelor’s degree in computer science.

Counsel states that the evaluation from [REDACTED] concludes that the beneficiary holds the equivalent of a bachelor’s degree in computer science. Upon review, the AAO notes that the evaluation states that the beneficiary’s bachelor’s degree is equivalent to three years of study towards a bachelor’s degree in accounting. The evaluation only grants the equivalent of 65 credits towards a bachelor’s degree in computer science. Further, the evaluation states that the beneficiary’s master’s degree in commerce is equivalent to a bachelor’s degree in accounting, not computer science. The evaluation only grants the equivalent of 15 credits of study towards a bachelor’s degree in computer science. It is only when the beneficiary’s combined degrees, training certificates, and diplomas are considered together that the evaluation concludes that the beneficiary has the equivalent of a bachelor’s degree in computer science.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien’s eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien’s eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert’s qualifications or the relevance, reliability, and probative value of the testimony).

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” *See* <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” *See* <http://edge.aacrao.org/info.php>. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials.⁴ If placement recommendations are

⁴ *See An Author’s Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIO

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.⁵

According to EDGE, a three-year Bachelor of Commerce degree from India is comparable to “two to three years of university study in the United States.” In addition, a Master of Commerce degree from India is comparable to “a bachelor’s degree in the United States.”

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal is sufficient to establish that the beneficiary more likely than not possesses the foreign equivalent of a U.S. bachelor’s degree in commerce. The AAO informed the petitioner of EDGE’s conclusions in an RFE dated April 4, 2012. However, the labor certification clearly states that the offered position requires a bachelor’s degree in MIS, computer science, engineering, or math and the labor certification does not permit an individual to qualify for the offered position with a different field of study. A review of the beneficiary’s transcripts shows that few of the courses listed in either program are in the field of computer science; rather, the courses focus on accounting and economics.

EDGE further discusses postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate degree. EDGE states that a postgraduate diploma following a two-year bachelor’s degree represents attainment of a level of education comparable to one year of university study in the United States. EDGE also states that a postgraduate diploma following a three-year bachelor’s degree represents attainment of a level of education comparable to a bachelor’s degree in the United States. However, the “Advice to Author Notes” section states:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse

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⁵ 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 PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

The AICTE was established in November 1945 as a “national level Apex Advisory Body to conduct survey on the facilities on technical education and to promote development in the country in a coordinated and integrated manner.” See <http://www.aicte-india.org/aboutus.htm> (accessed September 17, 2012). As stipulated in the National Policy of Education (1986), AICTE has the “statutory authority for planning, formulation and maintenance of norms and standards, quality assurance through accreditation, funding in priority areas, monitoring and evaluation, maintaining parity of certification and awards and ensuring coordinated and integrated development and management of technical education in the country.” *Id.* As AICTE ensures the foundation of norms and standards, the educational value of an unaccredited institution cannot be properly assessed.

The evidence in the record on appeal did not establish that the beneficiary's postgraduate diploma in computer applications from Vision Computers was issued by an accredited university or institution approved by AICTE, or that a two- or three-year bachelor's degree was required for admission into the program of study. In fact, the AAO notes that based on a review of the AICTE website, Vision Computers is not an accredited institution within India. See <http://www.aicte-india.org/misaccreditedinstitutions.htm> (accessed September 17, 2012).

On April 4, 2012, the AAO issued an RFE requesting documentation that [REDACTED] is accredited to award diplomas. In the May 17, 2012 response, counsel failed to submit documentation to establish that [REDACTED] was approved by the AICTE. The evidence in the record is insufficient to establish that the beneficiary's post graduate diploma from an unaccredited institution is equivalent to any amount of education toward a U.S. bachelor's degree issued by an accredited institution of higher education.

In the instant case, the offered position is for a programmer analyst and requires an individual with four years of college culminating in a bachelor's degree. Therefore, the offered position requires a professional. The beneficiary possesses a master's degree in commerce from [REDACTED] India. This degree has been determined to be the foreign equivalent degree 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. In addition, for classification as a professional, the beneficiary must also meet all of the requirements of the offered position set forth on the labor certification. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree in one of the fields specified on the labor certification: MIS, computer science, engineering, or math. Therefore, the AAO must conclude that the beneficiary does not meet the minimum requirements of the job offered, as those requirements are stated on the labor certification prepared by the petitioner and certified by the DOL. The petitioner has not established that the alien beneficiary possesses the

educational qualifications required to fill the “professional” job opportunity at issue. *See* 8 C.F.R. § 204.5(l)(3)(ii)(C).

The AAO will also consider whether the petition may be approved in the skilled worker classification. Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. *See also* 8 C.F.R. § 204.5(l)(2).

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

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(l)(4). The labor certification must require at least two years of training and/or experience. Relevant post-secondary education may be considered as training. *See* 8 C.F.R. § 204.5(l)(2).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least two years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

In evaluating 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 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].” *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION

Grade School: [Blank]

High School: [Blank]

College: [Blank]

College Degree Required: Bachelor's

Major Field of Study: "MIS, Comp. Sci, Eng (any), Math"

TRAINING: [Blank]

EXPERIENCE: 1 year in the job offered or in the related occupation of systems analyst

OTHER SPECIAL REQUIREMENTS: [Blank]

As is discussed above, the beneficiary possesses a bachelor's degree in commerce from [redacted] which is equivalent to two to three years of university study in the United States. The beneficiary also possesses a master's degree in commerce from [redacted] which is equivalent to a bachelor's degree in commerce in the United States.

The labor certification does not permit a lesser degree, a combination of lesser degrees, and/or a quantifiable amount of work experience, such as that possessed by the beneficiary.⁶ Nonetheless, the AAO RFE permitted the petitioner to submit any evidence that it intended the labor certification to require an alternative to a U.S. bachelor's degree in MIS, computer science, engineering, or math, or a single foreign equivalent degree, as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.⁷ Specifically, the AAO

⁶ The DOL has provided the following field guidance: "When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the [labor certification] as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." See Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). The DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [USCIS] to accept the employer's definition." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). The DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.

⁷ In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the offered position. See

requested that the petitioner provide a copy of the signed recruitment report required by 20 C.F.R. § 656, together with copies of the prevailing wage determination, all recruitment conducted for the position, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts.

In response, counsel points to a letter from the petitioner to DOL, dated November 16, 2004, indicating that the petitioner required "... a person who has a Bachelor's degree in MIS, Comp Sci, Engg, Math With 2 years of experience as a Programmer/Systems Analyst." The letter also states, "The educational requirements and job duties of the proffered position clearly mark the position as a 'specialty occupation' within the meaning of 8 C.F.R. 214.2.(h)(4)." Counsel states, "Clearly, this employer explained to the DOL that it would accept from the sponsored alien and any potentially qualified worker the equivalent to a U.S. Bachelor's degree that is based on a combination of education, training and even experience... The Company clearly understood the position to be one for which the Beneficiary could qualify based on a combination of education just as is possible for H1B classification." Counsel also provided a copy of an email sent to DOL, dated April 30, 2012, requesting copies of the petitioner's records.

On June 29, 2012, the petitioner submitted additional documentation in response to the RFE, stating that the DOL had provided the requested documents. The additional evidence included the following pertinent documentation related to the minimum experience requirements:

- A Notice of Job Opportunity signed March 21, 2005. The notice states that it was posted on the premises from February 20, 2005 to March 20, 2005. The title is listed as "Programmer Analyst" and states that the requirements are "Bachelor's in MIS, Comp. Sci Eng(any), Math with one year of experience on the job as a Systems Analyst." A notation on the notice indicates that no responses were received.
- A printout dated February 14, 2005 of an online job posting from New Jersey's Job Bank. The posting included the following information:
 - Job Title: Programmer Analysts
 - Modified: 2/7/05
 - Expires: 3/24/05
 - Education: Bachelor's Degree
 - Required Degree/Formal Training: not provided
 - Required Licenses/Certificates: not provided

Maramjaya v. USCIS, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). The best evidence of the petitioner's intent concerning the actual minimum educational requirements of the offered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence ensures that the stated requirements of the offered position as set forth on the labor certification are not incorrectly expanded in an effort to fit the beneficiary's credentials. Such a result would undermine Congress' intent to limit the issuance of immigrant visas in the professional and skilled worker classifications to when there are no qualified U.S. workers available to perform the offered position. *See Id.* at 14.

- Experience: Entry level (0-2 years)
- Illegible copies of print ads in the Star Ledger from 2005 dated February 7th, 13th, and 20th.

A letter dated June 27, 2012 from counsel was submitted, stating, "In response to the Request for Evidence (RFE) issued by the AAO, we indicated that the information provided to the U.S. Department of Labor (DOL) with the ETA Form 750, Labor Certification, clearly reflected that the Petitioner intended that the Beneficiary should qualify based on a combination of education... The copies of advertisements and Notices of Filing included by the DOL do not include any language beyond the Bachelor's Degree requirement on the ETA Form 750. However, such additional language was not required by the DOL, as explained in the response to the RFE issued by the AAO..."

The response also included a letter dated March 17, 2005 from the petitioner to DOL. The letter states, in pertinent part, "Please be advised that our company placed an advertisement for in [sic] Programmer Analyst in the Star Ledger on February 7th, 13th, 20th of 2005 and America's Job Bank for 45 days. This shows a good faith effort to conduct a recruitment process on the part of the company. There were no responses to these advertisements. In addition to the advertisement, we posted a notice (a copy of the notice is attached) on our premises. There were no responses to the posting. Our recruitment efforts clearly reveal that we were unable to recruit a Software Engineer with the necessary skills and experience. We require a person who has a Bachelor's degree in MIS, Comp. Sci, Eng (any), Math with one year of experience on the job or as a Systems Analyst."

No documentation was submitted to establish that the petitioner notified DOL that the educational requirements of the offered position could be met with a bachelor's degree in a field of study other than MIS, computer science, engineering, or math. Further, as the notice posted on the premises specifically stated that a bachelor's degree in MIS, computer science, engineering, or math was required, it has not been established that U.S. workers without four-year bachelor's degrees in MIS, computer science, engineering, or math were, in fact, put on notice that they were eligible to apply for the position.

The petitioner failed to establish that the terms of the labor certification are ambiguous and that the petitioner intended the labor certification to require less than a four-year U.S. bachelor's degree in MIS, computer science, engineering, or math, or foreign equivalent degree, as that intent was expressed during the labor certification process to the DOL and potentially qualified U.S. workers.

Therefore it is concluded that the terms of the labor certification require a four-year U.S. bachelor's degree in MIS, computer science, engineering, or math, or a foreign equivalent degree. The beneficiary does not possess such a degree. The petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date. Therefore, the beneficiary does not qualify for classification as a skilled worker.⁸

⁸ In addition, for classification as a skilled worker, the beneficiary must also meet all of the requirements of the offered position set forth on the labor certification. 8 C.F.R. § 103.2(b)(1), (12).

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification 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 14.⁹ In addition, 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 (D.D.C. Mar. 26, 2008)(upholding USCIS interpretation that the term “bachelor’s or equivalent” on the labor certification necessitated a single four-year degree).

In the instant case, unlike the labor certifications in *Snapnames.com, Inc.* and *Grace Korean*, the required education is clearly and unambiguously stated on the labor certification and does not include the language “or equivalent” or any other alternatives to a four-year bachelor’s degree in MIS, computer science, engineering, or math.

In summary, the petitioner has failed to establish that the beneficiary possessed a U.S. bachelor’s degree in MIS, computer science, engineering, or math, or a foreign equivalent degree from a college or university as of the priority date. The petitioner also failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act or as a skilled worker under section 203(b)(3)(A)(i) of the Act.

See *Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

⁹ In *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), the court concluded 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.” However, the court in *Grace Korean* makes no attempt to distinguish its holding from the federal circuit court decisions cited above. Instead, as legal support for its determination, the court cites to *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)(the U.S. Postal Service has no expertise or special competence in immigration matters). *Id.* at 1179. *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. See section 103(a) of the Act.

(b)(6)

Page 16

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.