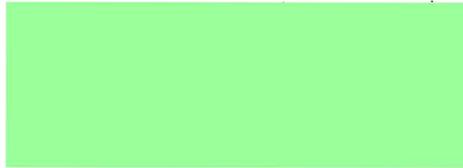


(b)(6)

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: **OCT 10 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 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 (director), 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 product development business. It seeks to permanently employ the beneficiary in the United States as a computer support specialist. 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 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.<sup>1</sup>

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 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

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<sup>1</sup> 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).

(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).<sup>2</sup> *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

*Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983). Relying in part on *Madany*, 696 F.2d at 1008, the Ninth Circuit stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

*K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from the DOL that stated the following:

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

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).<sup>3</sup> The AAO will first consider whether the petition may be approved in the professional classification.

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<sup>3</sup> 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 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

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 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.

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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.

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 *Snapshot.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 beneficiary possesses a diploma in electronic engineering from the Board of Technical Examinations, Maharashtra State, India, completed in 1990.

The record contains a copy of the beneficiary's diploma in electronics engineering from the Board of Technical Examinations, [REDACTED] transcripts from the Board of Technical Examinations, [REDACTED] a Bachelor of Science degree from [REDACTED] naming the institution as [REDACTED] and the subject in which the beneficiary was examined as "Computer" dated April 28, 1991. The record also contains certificates for completing courses in Cisco Certification, Microsoft Certification, and Brainbench Internet Security.

The record also contains an evaluation of the beneficiary's credentials prepared by [REDACTED] for [REDACTED] on March 25, 2009, and an evaluation prepared by [REDACTED] for [REDACTED] on April 1, 2003. The evaluation from [REDACTED] concludes that the beneficiary's Bachelor of Science degree from [REDACTED] is equivalent to three years of academic coursework from an accredited institution of higher education in the United States. The evaluation from [REDACTED] concludes that the beneficiary's diploma in electronic engineering from the Board of Technical Examinations, [REDACTED] is equivalent to completing requirements substantially similar to those required toward the completion of academic studies leading to a bachelor's degree from an accredited institution of higher education in the United States, and further, that the beneficiary's combination of academic coursework and his twelve years of work experience are equivalent to a Bachelor of Science degree in electronics engineering from an accredited institution of higher education in the United States.

The beneficiary has set forth his education credentials on Part B, Item 11 of the labor certification and signed the labor certification on March 15, 2005, under a declaration that the contents of the form are true and correct under penalty of perjury. At Item 11 where the beneficiary is required to list "Names and Addresses of Schools, Colleges and Universities Attended," including trade or vocational training facilities, the beneficiary did not provide any information concerning his degree from [REDACTED]. In addition, the evaluation of the beneficiary's credentials prepared by [REDACTED] for [REDACTED] references the studies undertaken, the number of credit units earned, the number of years of coursework, and the grades earned, but the evidence of record does not contain the beneficiary's transcripts from [REDACTED] or its subsidiary institution also listed on the diploma, [REDACTED]. Further, the evaluation prepared by [REDACTED] states that the beneficiary earned his diploma from [REDACTED] rather than [REDACTED] which is the institution listed on the diploma. There is no evidence in the record to demonstrate that these are two names used by the same institution. It is also not clear why the evaluation prepared by [REDACTED] does not reference the beneficiary's claimed diploma in electronic engineering from the Board of Technical Examinations, [REDACTED] and why the evaluation prepared by [REDACTED] fails to reference the beneficiary's claimed Bachelor of Science degree from [REDACTED]. Neither evaluation commented on the claimed academic credentials on which the other evaluator relies.

The AAO also notes that the transcripts as well as the beneficiary's statements on the labor certification state that he was earning his diploma in electronics engineering from 1986 through June 1990. Therefore, it is not clear how the beneficiary could have earned a Bachelor of Science degree from [REDACTED] on April 28, 1991, considering that [REDACTED] evaluation states that the beneficiary had to complete three years of academic coursework to earn the degree. The AAO notes that only ten months had passed between the completion of the beneficiary's diploma in electronics engineering from the Board of Technical Examinations, [REDACTED] and the claimed completion of a three year course of study.

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).

It is further noted that the evaluation prepared by [REDACTED] uses the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The petitioner relies on the beneficiary's claimed three-year Bachelor of Science degree from [REDACTED] and the beneficiary's diploma in electronic engineering from the Board of Technical Examinations, [REDACTED] combined with the beneficiary's twelve years of work experience as being equivalent to a U.S. bachelor's degree. A three-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees and/or work experience, the result is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional.

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 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.<sup>4</sup> If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>5</sup>

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<sup>4</sup> *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](http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx).

<sup>5</sup> 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.

According to EDGE, a three-year Bachelor of Science degree from India is comparable to “two to three years of university study in the United States,” and a diploma in engineering from India is comparable to “up to one year of university study in the United States.”

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor’s degree in electrical engineering, electronics engineering, computer science, or a related field. The AAO informed the petitioner of EDGE’s conclusions in a Request for Evidence (RFE) dated June 6, 2012. The RFE requested, among other things, that the petitioner submit the following:

- A written statement clarifying why the beneficiary did not list the claimed bachelor’s degree from [REDACTED] on the labor certification.
- Copies of the beneficiary’s transcripts from [REDACTED] or its subsidiary institution listed on the diploma, [REDACTED]
- Evidence sufficient to demonstrate that the education credentials earned from [REDACTED] referenced by [REDACTED] are the same as those from [REDACTED]
- A written statement clarifying why each evaluation failed to list all the beneficiary’s claimed educational accomplishments.
- Evidence sufficient to demonstrate how the beneficiary earned the claimed three year bachelor’s degree from [REDACTED] on April 28, 1991, after completing the diploma program from the Board of Technical Examinations, [REDACTED] in June 1990, less than one year before.

In response to the RFE, the petitioner submits a letter from the beneficiary, evidence of the petitioner’s recruitment efforts, and evidence regarding the petitioner’s continuing ability to pay the proffered wage beginning on the priority date. The beneficiary’s letter dated July 14, 2012, states that he attended [REDACTED] for three years from approximately June 1988 to April 1991 where he completed the Bachelor of Science degree course. He also states that he enrolled in an electronics engineering course run by the [REDACTED] in 1986. The beneficiary states that he had to complete most of the Bachelor of Science degree through long-distance learning and commute by train or bus for the examinations while he focused on his electronics engineering course. The beneficiary further states that since he relied more on his electronics engineering course to obtain employment, his bachelor’s degree became less important and he barely remembered it and eventually lost his transcripts and other records, except the degree

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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.

which his parents located for him. He states that he was unable to obtain copies of the transcripts or other records from [REDACTED]. The beneficiary also states that the school is located in [REDACTED] and that the education evaluation which referred to it as being in [REDACTED] is in error.

The AAO notes that the beneficiary's letter fails to resolve the inconsistencies in the record. The beneficiary asserts that he lost the transcripts and records of his attendance at [REDACTED] long ago as they were not pertinent to his career. It was only by asking his parents to search for his information that they discovered the copy of his degree. However, the education evaluation submitted by [REDACTED] for [REDACTED] indicates that he reviewed these records as he references and relies upon the studies undertaken, the number of credit units earned, the number of years of coursework, and the grades earned at [REDACTED]. Therefore, either the transcripts [REDACTED] references in his evaluation were actually provided and the beneficiary is not being truthful, or the beneficiary is correct and the education evaluation from [REDACTED] contains misrepresentations regarding the beneficiary's credentials.<sup>6</sup>

*Matter of Ho* states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Supra.* at 591-92.

In addition, the AAO does not find the beneficiary's explanation persuasive as to how he earned the claimed three year bachelor's degree from [REDACTED] on April 28, 1991, after completing the diploma program from the Board of Technical Examinations, [REDACTED] in June 1990, less than one year before. No probative evidence was submitted to demonstrate that [REDACTED] or its subsidiary institution listed on the diploma, [REDACTED], offered long-distance learning opportunities which would have

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<sup>6</sup> See section 212(a)(6)(C) of the Act, 8 U.S.C. § 1182(a)(6)(C), regarding misrepresentation, "(i) in general – any alien, who by fraud or willfully misrepresenting a material fact, seeks (or has sought to procure, or who has procured) a visa, other documentation, or admission to the United States or other benefit provided under the Act is inadmissible."

See also 20 C.F.R. § 656.31(d) regarding labor certification applications involving fraud or willful misrepresentation:

(d) finding of fraud or willful misrepresentation. If as referenced in Sec. 656.30(d), a court, the DHS or the Department of State determines there was fraud or willful misrepresentation involving a labor certification application, the application will be considered to be invalidated, processing is terminated, a notice of the termination and the reason therefore is sent by the Certifying Officer to the employer, attorney/agent as appropriate.

allowed the beneficiary to attend both [REDACTED] and the diploma program from the Board of Technical Examinations, [REDACTED] simultaneously.

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 from a college or university. The petitioner has failed to overcome the conclusions of EDGE with reliable, peer-reviewed information. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

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: none

High School: none

College: 4 years

College Degree Required: BS

Major Field of Study: Electrical/Electronics Engineering

TRAINING: none

EXPERIENCE: 4 years in the job offered or in the related occupation of Software Engineer

OTHER SPECIAL REQUIREMENTS: "Continue from Item #14 Computer Science (or foreign degree equivalent)"

Part B, Item 11 of the labor certification states that the beneficiary's education related to the offered position is a diploma from the Board of Technical Examinations, [REDACTED] completed in 1990.

As is discussed above, the record contains the beneficiary's diploma from the Board of Technical Examinations, [REDACTED] which is equivalent to up to one year of university study in the United States. The record also contains the beneficiary's Bachelor of Science degree from [REDACTED] which is equivalent to two to three years of university study 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.<sup>7</sup> Nonetheless, the

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<sup>7</sup> 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

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 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.<sup>8</sup> Specifically, the AAO 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.

The petitioner now submits a recruitment effort report dated June 18, 2007, a notice of job posting, and copies of three advertisements placed in the classified ads of the *Tribune/Times-Star* between April 27, 2007, to April 29, 2007. The petitioner asserts that it did not receive any responses to the job postings.

The AAO notes that none of these documents mentions the possibility that the petitioner would consider a combination of education and experience in lieu of a bachelor's degree or a foreign equivalent degree. The notice of job posting specifically states that the minimum education is a "B.S degree in Electrical/Electronics Engineering or Computer Science (or foreign equivalent)." In addition, four years of experience in the job offered, or four years experience in the related occupation of software engineer are required. The classified ads specifically state that the position requires a "BS in Electrical/Electronics Engg or CS (or for equiv) 4 yrs exp.in related occupation S/ware Engg."

The petitioner failed to establish that 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 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 electrical engineering, electronics engineering, or computer science, or a foreign

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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.

<sup>8</sup> 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 *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.

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.<sup>9</sup>

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.<sup>10</sup> 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 summary, the petitioner has failed to establish that the beneficiary possessed a U.S. bachelor’s degree 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

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<sup>9</sup> 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).

<sup>10</sup> 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.

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.

Beyond the decision of the director, the AAO noted in the RFE that the evidence in the record does not establish that the beneficiary possesses the required experience for the offered position. As is discussed above, the petitioner must demonstrate that the beneficiary possessed all of the requirements stated on the labor certification as of the March 23, 2005, priority date. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The labor certification states that the offered position requires four years of experience in the offered position or in the related occupation of software engineer.

Part B, Item 15 of the labor certification states that the beneficiary qualifies for the offered position based on experience with eight different employers including the petitioner. Letters of experience from several employers were also submitted. However, the AAO noted that there is a conflict between the dates of employment on two of the letters. Although the other letters in the record corroborate that the beneficiary has over four years of experience in the job offered or an acceptable related occupation, the record contains a letter from [REDACTED] President of [REDACTED] in Ontario, Canada which is not listed on the labor certification, and which states that the beneficiary worked for this organization from May 8, 2000, until December 31, 2000. According to the beneficiary's credentials set forth on the labor certification, he was employed during this same period of May 2000 to December 2000 with [REDACTED] in Cambridge, Massachusetts.

According to *Matter of Ho*:

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

19 I&N Dec. 582, 591-92 (BIA 1988).

In addition, in *Matter of Leung*, 16 I&N Dec. 2530 (BIA 1976), the Board's dicta notes that the beneficiary's experience, without such fact certified by DOL on the beneficiary's Form ETA 750B, lessens the credibility of the evidence and facts asserted.

The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or

employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

(C) *Professionals*. 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 showing that the minimum of a baccalaureate degree is required for entry into the occupation.

The petitioner was asked to submit evidence sufficient to resolve the inconsistencies in the record cited above and to establish that the beneficiary possessed the four years of experience in the offered position or in the related occupation of software engineer by the priority date as required by the terms of the labor certification. In response to the RFE, the petitioner submitted a letter which stated that the beneficiary's written note clarifies the apparent conflict in employment dates which occurred because the beneficiary was employed by [REDACTED] from May 2000 to December 2000, but he was deputed to work with [REDACTED] during much of that period. The petitioner states that the beneficiary asked for a reference letter from [REDACTED] simply because he had done a large measure of his work with them. The AAO notes that the beneficiary's letter does not, as the petitioner alleges, explain this situation. The petitioner provided an explanation to the conflicting employment dates, but submitted no evidence and no statement from the beneficiary which addressed this issue. Therefore, absent any additional evidence or a statement from the beneficiary regarding the conflicting dates in his work history, the AAO does not find the petitioner's explanation sufficiently persuasive.

The petitioner was also asked to demonstrate that it has been able to pay the proffered wage from the priority date until the beneficiary obtains lawful permanent residence. See 8 C.F.R. § 204.5(g)(2). The record of proceeding contains the petitioner's federal tax returns for 2005; however, as its fiscal year begins on April 1<sup>st</sup> and ends on March 31<sup>st</sup>, the priority date of March 23, 2005, fell within the dates covered by the 2004 tax return. In addition, the petitioner's 2005 tax return reflected insufficient net income or net current assets to pay the proffered wage, according to the table below.

Year	Proffered wage	Net Income	Net current assets
2005	\$61,859.20	-\$900,990	-\$2,381,413

The RFE requested annual reports, federal tax returns, or audited financial statements for the petitioner for 2004, 2006, 2007, 2008, 2009, 2010, and 2011. The petitioner failed to submit any financial records that were specifically requested by the AAO.<sup>11</sup> The petitioner also failed to submit copies of Forms W-2 or 1099 for other beneficiaries from the priority date of the instant petition to the present. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14). Therefore, the petitioner has not demonstrated that it had the ability to pay the proffered wage from the priority date to the present.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.

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<sup>11</sup> While the petitioner did submit copies of the beneficiary's IRS Form W-2 for 2005 to 2011, these items serve as *prima facie* evidence of the petitioner's ability to pay the proffered wage and will not be considered absent the regulatory-prescribed financial documents that were requested in the AAO's RFE.