



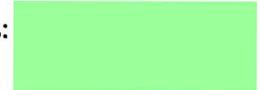
U.S. Citizenship
and Immigration
Services

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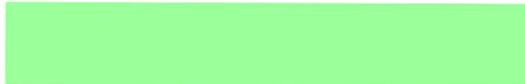


DATE: APR 18 2013

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,


Ron Rosenberg
Acting 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 is a PCB manufacturer. It seeks to permanently employ the beneficiary in the United States as an chemist. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary met the minimum requirements stated on the ETA Form 9089 as of the priority date. The director denied the petition accordingly.

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 an ETA Form 9089, Application for Permanent 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 April 12, 2007. *See* 8 C.F.R. § 204.5(d).

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.

As set forth in the director's May 7, 2009 denial, an issue in this case is whether the beneficiary possesses a U.S. bachelor's degree or foreign equivalent as required by the terms of the labor certification and for classification as a professional.

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-

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).

- (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
- (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to 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 record of proceeding whether the petition should be considered under the skilled worker or

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(1)(2).

The regulation at 8 C.F.R. § 204.5(1)(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(1)(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(1)(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(1)(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.

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.

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 beneficiary possesses a Bachelor's degree in Chemistry from [REDACTED] India completed in 2003.

The record contains a copy of the beneficiary's Bachelor of Science diploma granted in 2003 and statement of marks from [REDACTED]. The record also includes three evaluations of the beneficiary's credentials.

The evaluation by [REDACTED] for [REDACTED] ([REDACTED] Evaluation), dated July 27, 2007, concludes that the beneficiary has the equivalent of a U.S. Bachelor of Science degree in

Chemistry. The evaluation awards the beneficiary 187 undergraduate credits based on contact hours using the Carnegie unit with a grade point average (GPA) of 2.97. The credits assigned to each course by Dr. [REDACTED] vary from 7.2 credits to 28.8 credits per course. Dr. [REDACTED] does not state on which information she relied to arrive at her conclusions regarding the courses the beneficiary took, the grades he received, and the number of credits received for each class. Specifically, the beneficiary's transcript does not provide any information as to classroom hours or credits.

In response to the AAO's Request for Evidence (RFE) dated September 6, 2012, the petitioner submits a letter from Dr. [REDACTED]. In the letter, Dr. [REDACTED] explains that she based her assessment of the number of credit hours per course on those Indian transcripts that do state the number of contact hours, as well as on letters from Indian universities in support of their graduates confirming the number of contact hours. Dr. [REDACTED] notes that it is general practice for Indian transcripts not to contain credit hours or contact hours. She explains that, based on this evidence and her experience, "in the overwhelming majority of cases, the number of contact hours in an Indian 3yr bachelor's degree exceeds 1800." However, this is a generalized conclusion and cannot be applied to all degrees. As she states herself, "in the overwhelming majority of cases," the number of contact hours exceeds 1800. She does not provide any evidence as to why she believes the beneficiary's degree fits into this category of the "overwhelming majority of cases." Additionally, Dr. [REDACTED] has not provided any qualitative method by which she arrives at her conclusions for the beneficiary's degree or any peer-reviewed material that supports her approach.

In her letter, Dr. [REDACTED] further explains how she arrived at the beneficiary's GPA. She explains that the Indian system is not directly comparable to the U.S. system because the Indian system uses annual pass/fail examinations in lieu of a grade-based system as in the U.S. She states that "inventing ratios for conversion to a GPA...[which] would in fact have no genuine authority or wide applicability..." As a result, Dr. [REDACTED] states that she applies the "equal approach," but does not explain what the equal approach is or exactly how she arrives at her conclusion, which in this case, is that the beneficiary has a GPA of 2.97. She further states, "We believe that our solution represents the best compromise available and the evidence of those Indian graduates and professors whom we have consulted indicates we have arrived at a fair and accurate equivalency." As noted above, the analysis used to arrive at the conclusion that the beneficiary has earned 187 credit hours and a GPA of 2.97 is not explained. Dr. [REDACTED] only provides general statements without any evidence to support her conclusions. As stated above, Dr. [REDACTED] has not provided any qualitative method by which she arrives at her conclusions for the beneficiary's degree or any peer-reviewed material that supports her approach. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The record also contains an evaluation by [REDACTED] Evaluation), president of [REDACTED] [REDACTED] dated July 28, 2007. Dr. [REDACTED] concludes that the beneficiary's degree is the equivalent of a "Bachelor of Science, representing 187 semester credit hours, with a major in Chemistry from a Regionally Accredited Institution of Higher Education in the United States of America." The evaluation is thirty-one pages long, however, it only mentions the beneficiary on pages 1, 2 and 30.

Both Dr. [REDACTED] and Dr. [REDACTED] argue that in the Indian bachelor's degree programs, the students have more "contact" hours than they do in the U.S. system. The evaluations claim that a student must attend at least 15 50-minute classroom hours to earn one semester credit hour under the U.S. system. Since U.S. bachelor's degree programs require 120 credit hours for graduation, the evaluations conclude that a program of study with at least 1800 classroom hours is equivalent to a U.S. bachelor's degree. Since a three-year bachelor's degree from India allegedly requires over 1800 classroom hours, the evaluations conclude that it is equivalent to a U.S. bachelor's degree. However, the record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise"⁴ at 12, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

The evaluations base this equivalency formula on the claim that the U.S. semester credit hour is a variant of the "Carnegie Unit." The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject.⁵ For example, 120 hours of classroom time was determined to be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school. This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class.⁶ According to the foundation's website, the "Carnegie Unit" relates to the number of classroom hours a high school student should have with a teacher, and "does not apply to higher education."⁷ Ultimately, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees.

Dr. [REDACTED] goes on at length about Carnegie Units and Indian degrees in general, concluding that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate but makes no attempt to assign credits for individual courses. Dr. [REDACTED] credibility is serious diminished as he completely distorts an article by Leo Sweeney and Ravi Kallur. Specifically, Dr. [REDACTED] asserts that this article concludes that because the United States is willing to consider three-year degrees from Israel and the

⁴ http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf, accessed January 14, 2013 and incorporated into the record of proceedings.

⁵ The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose charge is "to do and perform all things necessary to encourage, uphold, and dignify the profession of the teacher." <http://www.carnegiefoundation.org/about-us/about-carnegie> (accessed January 14, 2013).

⁶*Id.*

⁷*Id.*

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

Dr. [REDACTED] also relies on an article coauthored with Dr. [REDACTED]. The record contains no evidence that this article has been published in a peer-reviewed publication. Rather, it has been posted on various internet websites of unknown significance. Moreover, the article is not persuasive. The article includes British colleges that accept three-year degrees for admission to graduate school but concedes that "a number of other universities" would not accept three-year degrees for admission to graduate school. Similarly, the article lists some U.S. universities that accept three-year degrees for admission to graduate school but acknowledges that others do not. In fact, the article concedes:

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

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

[REDACTED] Ed.D., President of [REDACTED], commented thus,

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

* * *

[REDACTED] raise similar objections to those raised by [REDACTED]

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

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

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

Dr. [REDACTED] and Dr. [REDACTED] also rely on United Nations Education Scientific and Cultural Organization (UNESCO) materials. The recommendation in these materials relates to “recognition” of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

‘Recognition’ of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State an deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition.

The UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define “comparable qualification.” At the heart of this matter is whether the beneficiary’s degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.⁸

⁸ UNESCO’s publication, “The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific” 82 (2d ed. 2004) (accessed on January 14, 2013 at <http://unesdoc.unesco.org/images/0013/001388/138853E.pdf> and incorporated into the record of proceedings), provides:

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

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

Id. at 84. (Emphasis added.)

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

(Emphasis added.)

The record also contains an evaluation by Dr. [REDACTED], president of [REDACTED] dated July 29, 2007. The evaluation concludes that the beneficiary's degree is the equivalent of a "Bachelor of Science, representing 187 semester credit hours, with a major in Chemistry from a Regionally Accredited Institution of Higher Education in the United States of America." Dr. [REDACTED] states that the beneficiary completed general and specialized courses, and concludes, "based on the subject matter and credit hours of these courses, most such courses would qualify as equivalent to courses in U.S. institutions." Dr. [REDACTED] however, does not indicate which courses the beneficiary completed, the total number of credits earned, or the specific courses which would "qualify as equivalent to courses in U.S. institutions."

Dr. [REDACTED] also relies on opinion letters, none of which carry the weight of peer-reviewed published materials on evaluating Indian degrees. Dr. [REDACTED] states that the four letters which he references are attached to his evaluation, however, only one of the four letters is included. None of the statements from the letters that Dr. [REDACTED] references in his evaluation are supported by evidence. Relying on these letters, Dr. [REDACTED] asserts that academic instruction is more intense in India than in the U.S. To support this assertion, Dr. [REDACTED] refers to a letter by the principal of [REDACTED] which states that the academic year in India is forty-two weeks long rather than thirty to thirty-six weeks long as in the U.S. and that students attend class for thirty-five hours per week, in excess of American students. However, attached to Dr. [REDACTED] evaluation is a printout which lists the Indian academic year as being thirty-six weeks long.

The letter attached to Dr. [REDACTED] evaluation from Professor [REDACTED] former Professor of physics at the [REDACTED] never provides a conclusion regarding the beneficiary's degree. The letter never mentions the beneficiary's degree or program of study, and the letter states that the beneficiary attended [REDACTED] from 2000-2003. However, according to the beneficiary's statements of marks, the beneficiary attended [REDACTED] from 1988 to 1990. Based on the contents of the letter, there is no indication that Professor [REDACTED] is evaluating the beneficiary's educational credentials. Furthermore, Professor [REDACTED] makes general references to the Indian contact hour system. He never explains the nature of the academic work which comprises a contact hour, nor how the contact hours compare with credit hours in the U.S. system. He additionally claims to have a full understanding of the Indian system of higher education and states that he is familiar with the U.S. system as well, but he fails to provide any credentials to support his claim.

Dr. [REDACTED], Dr. [REDACTED] and Dr. [REDACTED] credentials are questionable. While Dr. [REDACTED] indicates that she is a member of the American Evaluation Association (AEA), the Association of International Educators (NAFSA) and the European Association for International Education (EAIE), the record does not indicate what these organizations require for membership. We have reviewed the websites of these associations, and none of the associations require anything other than the payment of dues.⁹ Regardless, the payment of dues does not confer any expertise. Additionally, as

⁹ The bylaws for the AEA, accessed on March 27, 2013 at www.eval.org/aboutus/bylaws.asp, indicate: "Any individual interested in the purposes of the Association shall be eligible for membership." The bylaws for NAFSA, downloaded from www.nafsa.org on January 14, 2013, do

stated in the RFE, Ms. [REDACTED] indicates that she holds a Bachelor's degree from [REDACTED] a Master's degree from the [REDACTED] and a doctorate from the [REDACTED]. According to its website, [REDACTED] grants degrees based solely upon work experience. [REDACTED] (accessed August 13, 2012). Ms. [REDACTED] also states that she is a professor at [REDACTED] which, she claims, "is a distance learning college in the United Kingdom registered with the Department for Education and Skills UK Register of Learning Providers." Ms. [REDACTED] claims that [REDACTED] also grants degrees based upon prior training and work experience. This institution, however, has no presence on the internet which is unusual given that it purportedly provides distance learning.

As noted in the RFE, Dr. [REDACTED] and Dr. [REDACTED] indicate that they have a canonical diploma of [REDACTED], equivalent to a Doctorate of Divinity, from [REDACTED]. There is no reference to this institution on the internet.¹⁰

In response to the RFE in which the AAO noted the evaluators' credentials, counsel contends that "nowhere is it explained in what fashion these factors are relevant to the credibility of the evaluation conclusion." The credentials of the evaluators are directly relevant to establishing credibility. Evaluators must have the education and experience to be qualified to provide evaluations of the beneficiary's credentials. Any lack of education or experience, or any fabrication of education and experience, casts doubt on the evaluator's qualifications, and thus, on the credibility of the evaluations. Additionally, the evaluations rely on individual opinions supported by conventions and published materials that do not address how to evaluate Indian degrees.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)). Given the discrepancies in the evaluators' credentials, the lack of verifiable evidence that provided the basis for the evaluators' conclusions, and the inconsistencies, the AAO does not find the evaluations of Ms. [REDACTED] Mr. [REDACTED] and Mr. [REDACTED] credible.

not provide any specific requirements for members in Article II other than the payment of dues. Voting members must be individuals working in educational institutions, training or research facilities, organizations involved with international education or those employed independently.

¹⁰ The AAO notes that in its RFE, it was stated that the only reference to this institution on the internet was a reference to its founding in 1985 on the website [REDACTED]. However, that website has since been marked private and requires a password for access.

The petitioner relies on the beneficiary's three-year bachelor's degree 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.

Given the serious inconsistencies in the record, the AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).¹¹ According to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials." 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. "An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at [www.Aacrao.org/publications/guide to creating international publications.pdf](http://www.Aacrao.org/publications/guide%20to%20creating%20international%20publications.pdf). 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.* at 11-12.

In the section related to the Indian educational system, EDGE provides that a three-year Bachelor of Science degree is comparable to "three years of university study in the United States." This information is inconsistent with the evaluations submitted.

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 accounting or business. The AAO informed the petitioner of EDGE's conclusions in its RFE dated September 6, 2012.

In response to the RFE, counsel challenges what he perceives as our reliance on the AACRAO materials to the exclusion of anything else. First counsel notes that EDGE is a subscription service and not publicly available. Counsel also expresses concern that USCIS is recommending or endorsing EDGE above other evaluators. Counsel then asserts that EDGE does not provide the credentials of its authors and solicits outside participation in proving information on a country's educational system.

¹¹ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

Counsel misinterprets the materials we provided in support of the RFE. While EDGE may solicit new information for review by AACRAO, as we specifically noted in the RFE, 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. 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.¹² Relevant printouts from EDGE were provided to the petitioner with the RFE and have been incorporated into the record.

Additionally, although counsel asserts that the AAO's use of EDGE is unreasonable, neither counsel nor the evaluators provided a credible alternative to EDGE. Moreover, counsel and the evaluators attempted to deflect from the actual issue in the case which is the beneficiary's credentials and whether he has the equivalent of a U.S. bachelor's degree. While Mr. [REDACTED] devoted 31 pages to the evaluation, he does not at any point discuss the subjects or courses taken by the beneficiary, and he does not provide any description of what information or data was used in his calculations in order to determine that the beneficiary achieved a number of "contact hours" equivalent to a U.S. bachelor's degree. Ms. [REDACTED] and Mr. [REDACTED] evaluations were also general with little to no relevant discussion or analysis of the beneficiary and his credentials. Therefore, it does not appear from the record that the evaluators performed a thorough analysis of the beneficiary's academic credentials in any of the three evaluations submitted. Mr. [REDACTED] only mentions the beneficiary on the first page of the evaluation, again on the second and third pages of the evaluation, and a final mention is made on the 30th page of the evaluation. The majority of the text on the 31 pages of the evaluation appears to be generic statements and assessments of varying educational systems, without providing any analysis of the statements in relation to the beneficiary's credentials. Likewise, Ms. [REDACTED] devotes approximately two pages of a 22-page evaluation to the beneficiary. There was no evidence submitted to corroborate the beneficiary's affidavit regarding the courses he took and the hours he spent in the classroom. 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).

¹²While not discussed in our previous notice, EDGE does, in fact, provide the credentials of the authors of each country section. The section on India is authored by Dr. Ravi Kallur. His credentials are listed on EDGE (accessed March 27, 2013) as follows:

Ravi Kallur is currently the Assistant Professor of Medical Humanities, Assistant Dean of Graduate Medical Education and Director of E. Grey Dimond MD Program in International Medicine at the University of Missouri-Kansas City. He has a PhD in Higher Education Administration and an MPA in health care administration. Ravi has 15 years of experience in international recruitment, admissions, advising, immigration, programming and office administration. He is the co-author of Special Report on India published by AACRAO/NAFSA. He has presented at regional and national meetings of AACRAO and NAFSA on topics of Indian Higher Education to best practices in developing international programs office. He reviews applications for undergraduate and graduate placement of FSA, Muskie and other programs.

The AAO reviewed the credentials evaluations submitted by the petitioner and did not find them to be supported by peer-reviewed material, analysis of the beneficiary's credentials based on anything more than generalized statements, or even on official transcripts. The petitioner had the opportunity, in response to the RFE, to provide such evidence. The petitioner did not submit any additional evidence regarding the beneficiary's credentials in response to the RFE.

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

One of the PIER publications also reveals that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. *A P.I.E.R. Workshop Report on South Asia* at 180 explicitly states that "transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year." The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate "may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis." This information seriously undermines the evaluations submitted, both of which attempt to assign credits hours for the beneficiary's three-year baccalaureate that are equal to or beyond the 120 credits typically required for a U.S. baccalaureate and neither of which could evaluate the credits on a course-by-course basis because no official transcript listing the courses taken was submitted.

The record still fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless.¹³

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

¹³ Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf accessed January 14, 2013 and incorporated into the record of proceedings, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

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:

- H.4. Education: Bachelor's degree in chemistry.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 months.
- H.7. Alternate field of study: None.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: None.

As discussed above, the beneficiary possesses a Bachelor of Science diploma from [REDACTED] India which is comparable to three years of university study in the U.S.

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.¹⁴ Nonetheless, the AAO's 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.¹⁵ Specifically, the AAO requested that the petitioner provide a copy

¹⁴ 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.

¹⁵ In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an

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 to the RFE, counsel states that the petitioner's previous counsel "had sole and exclusive custody of any documents relating to the alien employment certification." Counsel further states that the petitioner's previous attorney cannot be located and his telephone has been disconnected. Therefore, according to counsel, the information requested in the RFE cannot be obtained. Counsel's statement directly contradicts the ETA Form 9089. In Section M of the Form 9089, the petitioner indicated that the application was completed by the employer, rather than by counsel or any other preparer. The AAO notes that pursuant to 20 C.F.R. § 656.10(f), the employer is required to retain copies of the application for permanent employment certification and all supporting documentation for five years from the date of filing the application for permanent employment certification.

The petitioner failed to submit evidence requested in the RFE, and the petitioner did not submit any additional evidence to establish the petitioner's intent regarding the "equivalency" language in the labor certification. "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).

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 accounting 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.¹⁶

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.

¹⁶ 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).

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 14.¹⁷ 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, the AAO provided the petitioner the opportunity to establish its intent regarding the term “or equivalent” on the labor certification and the minimum educational requirements of the labor certification. The petitioner failed to establish that “or equivalent” was intended to mean that the required education could be met with an alternative to a four-year U.S. bachelor’s degree or foreign equivalent.

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 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.

Counsel argues that the Service must apply the preponderance of the evidence standard of review. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a

¹⁷ 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.

preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Nothing in the record of proceeding contains any type of notice from the director or any other USCIS representative that would have misled counsel into believing that USCIS requires “convincing” or “persuading” beyond what legal authority guides the agency in statute, regulatory interpretation, precedent case law, and administrative law and procedure. Generally, when something is to be established by a preponderance of evidence, it is sufficient that the proof establish that it is probably true. *Matter of E-M-*, 20 I&N Dec. 77 (Comm’r 1989). The evidence in each case is judged by its probative value and credibility. Each piece of relevant evidence is examined and determinations are made as to whether such evidence, either by itself or when viewed within the totality of the evidence, establishes that something to be proved is probably true. Truth is to be determined not by the quantity of evidence alone, but by its quality. *Matter of E-M-*, 20 I&N Dec. 77 (Comm’r 1989).

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.