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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

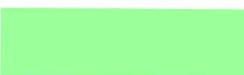


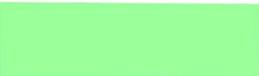
U.S. Citizenship
and Immigration
Services



DATE: **AUG 27 2013**

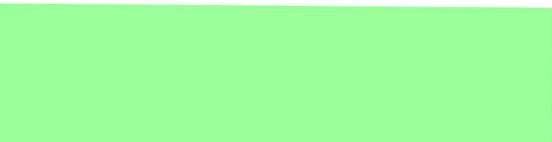
OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner: 
 Beneficiary:

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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner describes itself as a surgical hair restoration business. It seeks to employ the beneficiary permanently in the United States as a project manager, telecom & predictive dialer data migration. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner marked the box "e" in Part 2, indicating that it seeks to classify the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 USC § 1153(b)(3)(A)(ii). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification. The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is October 7, 2009. *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 and for classification as a professional.

The record shows that the appeal is properly filed and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

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

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

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.

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

§ 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:

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. 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(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).

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 at least a U.S. bachelor’s degree or a foreign equivalent degree from a college or university; and the job offer portion of the labor certification requires at least a bachelor’s degree or a foreign equivalent degree.

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).

At issue in this case is whether the beneficiary possesses a U.S. bachelor’s degree or a foreign equivalent degree, and whether the beneficiary meets the requirements of the labor certification.

The Beneficiary Must Possess a U.S. Bachelor’s Degree or Foreign Equivalent Degree

As is noted above, in order to be classified as a professional, the beneficiary must possess at least a U.S. bachelor’s degree or a foreign equivalent degree from a college or university. 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. 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 of Commerce from University of Delhi, India received in 1998.

The record contains a copy of the beneficiary's Bachelor of Commerce and transcripts completed in 1998 from the University of Delhi, India.

The record also contains an evaluation of the beneficiary's educational credentials, dated July 3, 2007, prepared by Park Evaluations & Translations. The evaluation describes the beneficiary's degree from University of Delhi as a Bachelor of Commerce degree as equivalent to "three years of academic coursework towards a degree from an accredited institution of higher education in the United States." The evaluator concludes that, in combination with his six years of professional experience, the beneficiary possesses the equivalent to a Bachelor's of Science degree in Management from an accredited institution of higher education in in the United States. The

evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

The director denied the petition on August 3, 2012. He determined that the beneficiary's bachelor of Commerce degree combined with his professional experience could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in Science Management because the regulation at 8 C.F.R. § 204.5(1)(2) states in pertinent part "Professional means a qualified alien who holds at least a United States baccalaureate degree or foreign equivalent and who is a member of the Professions." The director also indicated that 8 C.F.R. § 204.5(1)(2) makes it clear that the degree alone must be equivalent to a U.S. baccalaureate.

On appeal, with regard to the beneficiary's qualifying academic credentials, counsel submitted additional credential evaluations. The petitioner submitted two evaluations from [REDACTED] both dated July 18, 2012. One evaluation indicates that the beneficiary's three years of academic coursework and examinations at the Board of Technical Education in Delhi, is equivalent to "one year of academic coursework from an accredited institution of higher education in the United States." The second evaluation from [REDACTED] states that the beneficiary's diploma from the Board of Technical Education in Delhi, coupled with the beneficiary's three year Bachelor of Commerce from the University of Delhi, and in combination with the beneficiary's 13 years of professional work experience,³ is equivalent to a Bachelor's of Arts in Management in the United States.

The evaluation from the [REDACTED] dated December 19, 2011, indicates the beneficiary's three-year Bachelor of Commerce combined with approximately three years of training or work experience is equivalent to a Bachelor's of Business Administration with a concentration in Management.

The evaluator from [REDACTED] seeks to combine the beneficiary's diploma from the Board of Technical Education in Delhi, his three-years of coursework at the University of Delhi, India, and his employment experience in order to determine that the beneficiary possesses a foreign equivalent degree of a U.S. bachelor's degree. However, as previously noted, 8 C.F.R. § 204.5(1)(3)(ii)(C) clearly indicates that a single foreign degree alone must be equivalent to a U.S. baccalaureate. The evaluator did not indicate in their evaluation that the beneficiary holds such a single degree.

³ The evaluator states that the beneficiary's 13 years of professional experience is the "equivalent of not less than four additional years of Bachelor's-level academic training in Management." The evaluation in the record used a three-to-one rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5).

The evaluator from [REDACTED] similarly asserts that the beneficiary's three years of academic coursework combined with his employment experience is the foreign equivalent of a U.S. bachelor's degree. Therefore, this evaluation also does not sufficiently demonstrate that the beneficiary holds a single degree as required under the regulations, as it too utilizes a combination of credentials approach in finding a foreign equivalent degree as presented in the evidence.

The petitioner submitted four credential evaluations into the record, which all indicate that the beneficiary's degree from the University of Delhi taken on its own is equivalent to only three years of post-secondary study, and is not equivalent to a U.S. bachelor's degree. The evaluators instead utilized different combinations of the beneficiary's academic coursework with differing variations of his employment experience to determine that his credentials should be considered the foreign equivalent to a U.S. bachelor's degree in accordance with section 8 C.F.R. § 204.5(1)(3)(ii)(C).

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). See also *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The petitioner relies on the beneficiary's three-year Bachelor of Commerce degree combined with academic coursework with the Board of Technical Education in Delhi, India, and work experience for the claimed equivalency 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 must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials.⁴ If placement recommendations are

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

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

According to EDGE, a three-year Bachelor of Commerce degree from India is comparable to “three years of university study in the United States.”

EDGE provides a great deal of information about the educational system in India. It also discusses both Post-Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post-Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor’s degree “represents attainment of a level of education comparable to a bachelor’s degree in the United States.” The “Advice to Author Notes,” however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor’s degree. On Rare occasions you will find a full time 2 year post graduate diploma.

Id.

The record of proceedings does not establish that the beneficiary’s technical education was a Post Graduate Diploma accredited by AICTE. Therefore, based on the conclusions of EDGE, the

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⁵ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

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. The AAO informed the petitioner of EDGE's conclusions in a Notice of Intent to Dismiss (NOID) dated May 31, 2013.

In response to the NOID, counsel submits a legal brief in which they assert that the academic credentials formerly submitted into the record were sufficient to demonstrate that the beneficiary holds the foreign equivalent of a U.S. bachelor's degree. Counsel asserts that 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) "permits a combination of foreign education and professional experience to be deemed the equivalent of a U.S. baccalaureate degree in the adjustment of nonimmigrant petitions." However, that regulation applies to non-immigrant petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The beneficiary was required to have a bachelor's degree on the labor certification. The petitioner's actual minimum requirements could have been clarified or changed before the labor certification was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed. Counsel further asserts that "it should not be assumed that since the employer did not explicitly state that the equivalent to a bachelor's degree is acceptable including that of a combination of education and/or experience, that it did not intend that to be the case." The non-immigrant regulations cited by counsel are in applicable in this matter, as discussed above. As previously stated, the regulations at 8 C.F.R. § 204.5(1)(3)(ii)(C) make it clear that the degree the beneficiary holds must on its own be equivalent to a U.S. baccalaureate. The evaluated combination of education and employment in conjunction with the beneficiary's three-year degree are insufficient to demonstrate a foreign equivalent degree to a U.S. bachelor's degree in this case, as the beneficiary's qualifying education must be derived from only one single degree.

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 Beneficiary Must Meet the Minimum Requirements of the Offered Position

The beneficiary must also meet all of the minimum requirements of the offered position as set forth on the labor certification by the priority date. 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 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:
Minimum level required: Bachelor’s.
- 4-B. Major Field Study:
Commerce.
- 7. Is there an alternate field of study that is acceptable?
The petitioner checked “yes” to this question.
- 7-A. If Yes, specify the major field of study:
Management.
- 8. Is there an alternate combination of education and experience that is acceptable?
The petitioner checked “no” to this question.
- 9. Is a foreign educational equivalent acceptable?
The petitioner listed “yes” that a foreign educational equivalent would be accepted.
- 6. Experience:
24 months required in the position offered.
(24 months as a Project Manager, or Call Center Manager,
or Production Manager.)
- 10. Is experience in an alternate occupation acceptable?
Yes, (24 months as a Project Manager, or Call Center Manager,
or Production Manager.)
- 14. Specific skills or other requirements:
“None.”

As set forth above, the proffered position requires a Bachelor's degree in Commerce, or Management, and 24 months of experience in the job offered, or the alternate acceptable occupations listed. On the ETA Form 9089, signed by the beneficiary, the beneficiary represented that the highest level of achieved education related to the requested occupation was a Bachelor's of Commerce. He listed the institution of study where that education was obtained as University of Delhi, and the year completed as 1998.

As is discussed above, the beneficiary possesses a Bachelor of Commerce from University of Delhi, India, which according to Edge, is equivalent to three-years of university study at a U.S. university. The terms of the labor certification require a four-year U.S. bachelor's degree in Commerce, or Management, or a foreign equivalent degree. 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.

Counsel asserts that the petitioner's "requirements of the position, by definition, should be interpreted to mean that as long as the bachelor's equivalent is determined, it is essentially equal in value regardless of it being based on education alone and/or combination of education and experience." This assertion is unsupported in the record. The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). However, if counsel's statement were accurate, it would suggest a discrepancy between the terms of the labor certification and the petitioner's recruitment. As indicated by counsel "USCIS may not impose the additional criteria of the meaning of what equivalent means if it conflicts with the statutory language." As previously stated, the petitioner marked box "e" in Part 2, on the Form I-140 petition, indicating that it seeks to classify the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Act.

It is noted that, if the labor certification did not require at least a four-year U.S. bachelor's degree or a foreign equivalent degree, the petition could not be approved. *See* 8 C.F.R. § 204.5(l)(3)(i) (the labor certification underlying a petition for a professional must require at least a U.S. bachelor's degree or a foreign equivalent degree).

Therefore, the requirements of the position as described on the labor certification include a U.S. bachelor's degree in Commerce, or Management, or a foreign equivalent degree in the alternative, according to all of the evidence presented.

The beneficiary does not possess a four-year U.S. bachelor's degree or a foreign equivalent degree. Therefore, 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.

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. The petitioner also failed to establish that the beneficiary met the minimum educational requirements of the offered position set

forth on the labor certification. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.