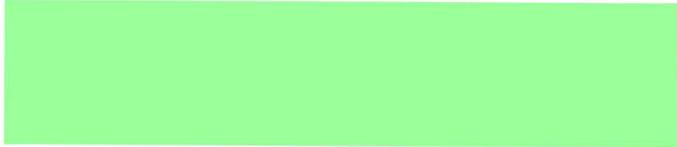




U.S. Citizenship
and Immigration
Services

(b)(6)

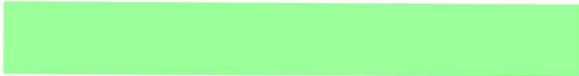


DATE: JUN 04 2013

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner:
Beneficiary:



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

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 describes itself as an insurance and financial services business. It seeks to permanently employ the beneficiary in the United States as an IT Application Analyst (Mainframe). The petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).

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 21, 2008. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess a bachelor's degree or the foreign equivalent thereof as required by the labor certification.

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

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

In the instant case, the petitioner requests classification of the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), which 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.

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).

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(1)(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(1)(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 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, as listed in the following sections of Part H:

4. Education: Bachelor’s degree.
- 4-B. Major field of study: “Computer Science, IS, Engineering or related field.”
5. Training: None required.
6. Experience in the job offered: None required.
7. Alternate field of study: None accepted.
8. Is there an alternate combination of education and experience: Yes.
- 8-A. If Yes, specify the alternate level of education required: Other.
- 8-B. If Other is indicated in question 8-A, indicate the alternate level of education required: “Any suitable combination of education, experience, or training.”
- 8-C. If applicable, indicate the number of years experience acceptable in question 8: “0.”²

² Part H.8-C. of the labor certification appears to be a scrivener’s error as it states “0” for the number of years experience that is acceptable in question 8, but Part 10-A. states that 60 months of experience in an alternate occupation is required. The petitioner placed newspaper, online, and

- H.9. Foreign educational equivalent: Accepted.
- 10. Is experience in an alternate occupation acceptable? Yes.
- 10-A. If Yes, number of months experience in alternate occupation required: "60."
- 10-B. Identify the job title of the acceptable alternate occupation: "IT App. Analyst (mainframe), Prog. Analyst or similar duties under a [different job title]."
- 14. Specific skills or other requirements: "Experience to include COBOL, DB2, JCL, TSO, CCA, Tailoring & Rate Loads, Data Warehouse, CCA Cycle Running, and MS Excel Macros. Demonstrated ability to drive offshore resources and communicate technical material both in writing and verbally. Willingness to travel 30%."

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). If the petitioner is able to demonstrate that a scrivener's error resulted in the "0" years of experience requirement in H.8-C., the requirements of the labor certification would appear to be: (1) a bachelor's degree in "Computer Science, IS, Engineering or related field," and 60 months of experience in the alternate occupation of "IT App. Analyst (mainframe), Prog. Analyst or similar duties under a [different job title];" or (2) "any suitable combination of education, experience, or training" in lieu of the bachelor's degree, and 60 months of experience in the alternate occupation of "IT App. Analyst (mainframe), Prog. Analyst or similar duties under a [different job title]."

In the instant case, the labor certification states that the beneficiary possesses an alternate level of education, which it states as "other," rather than a specific degree. The beneficiary's "other" education is described as a three-year degree in physics ("equiv. to U.S. degree with GNIIT cert.") from the [redacted] India, completed in 1998. The record contains a copy of the beneficiary's Bachelor of Science diploma from that university, and associated transcripts. The record also contains a certificate from the Academic Council of the [redacted] and transcripts, which state that the beneficiary was awarded the Title of GNIIT in Systems Management on January 21, 2003.

The record contains an evaluation of the beneficiary's educational credentials prepared by [redacted] Ph.D. for the International Credentials Evaluation and Translation Services (ICETS) in May 2004. The evaluation states that the beneficiary's "Title of GNIIT in [the] Systems Engineering program, considered together with his prior studies at [redacted] indicate that [the

media advertisements for the job opportunity, which tend to support this conclusion. The print and online materials advertised the following minimum requirements: "B.S. in Computer Science, Information Systems, Engineering or related field (or any suitable combination of education, experience or training) plus 5 years of experience in the job offered or in a related occupation such as Programmer Analyst or similar duties under a different job title." In any future filings, the petitioner must demonstrate that the statement of "0" in H.8-C. was a scrivener's error, or, provide evidence that DOL audited and accepted the job requirements as stated on the face of the labor certification.

beneficiary] satisfied similar requirements to the completion of a Bachelor of Science Degree in Computer Science from an accredited institution of tertiary education in the United States.”

The record also contains an evaluation of the beneficiary’s educational credentials prepared by [REDACTED] Ph.D. for [REDACTED]. The evaluation concludes that the beneficiary’s three-year degree from [REDACTED] as well as his “eight years of work experience and professional training in Computer Information Systems” is deemed the equivalent of at least a “Bachelor of Science degree in Computer Information Systems from an accredited institution of higher education in the United States.”

The first issue in the instant case is whether the beneficiary has a U.S. bachelor’s degree or the foreign equivalent thereof.

We have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, www.aacrao.org, 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.” <http://www.aacrao.org/About-AACRAO.aspx> (accessed May 30, 2013). Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* According to the registration page for EDGE, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php> (accessed May 30, 2013).

The director found that, according to EDGE, a three-year Bachelor of Science degree from India is comparable to “three years of university study in the United States.” 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). As discussed above, the petitioner has provided two evaluations, both of which indicate that the beneficiary’s degree from [REDACTED] standing alone, is not considered to be the foreign degree equivalent to a four-year U.S. bachelor’s degree, but rather they seek to combine the beneficiary’s degree with another certificate or work experience.

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 *14.⁴ In

⁴ 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.”

addition, the court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* See also *Maramjaya v. USCIS, Civ. Act No. 06-2158* (D.D.C. Mar. 26, 2008) (upholding USCIS interpretation that the term "bachelor's or equivalent" on the labor certification necessitated a single four-year degree).

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

Further, the petitioner stated in Part J, question 19 and 20, of the labor certification that, as of the priority date, the beneficiary qualified for the position based on an alternate combination of education and experience, indicated in H.6, and experience in the alternate occupation, indicated in H.10.

Counsel for the petitioner concedes that "the beneficiary's education is not equivalent to a U.S. bachelor's degree under current adjudication standards." Counsel instead asserts that the beneficiary qualifies for the instant position by meeting the alternative requirements of the labor certification. Therefore, the evidence in the record on appeal is not sufficient to establish that the degree that the beneficiary possesses is the foreign equivalent of a U.S. bachelor's degree in "Computer Science, IS, Engineering or related field."

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 second issue in this case is whether the beneficiary meets the alternate requirements of the labor certification. The labor certification appears to require 60 months of experience in the alternate acceptable occupation, "IT App. Analyst (mainframe), Prog. Analyst" or a position with similar duties under a different job title, in addition requiring "any suitable combination of education, experience, or training" that equates to a U.S. bachelor's degree.

As stated above, the evaluation by [REDACTED], Ph.D. for [REDACTED] relies upon the beneficiary's three-year degree from [REDACTED] as well as his

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.

“eight years of work experience and professional training in Computer Information Systems” to conclude that he has the equivalent of at least a “Bachelor of Science degree in Computer Information Systems from an accredited institution of higher education in the United States.” However, as part of these eight years of experience, Dr. [REDACTED] relies upon 23 months of experience with the petitioner which may not be used to qualify for the instant position. The petitioner stated in Part J, in answer to questions 19 and 20 on the labor certification, that as of the priority date the beneficiary qualified for the position offered based on an alternate combination of education and experience, indicated in H.6, and experience in the alternate occupation, indicated in H.10. Further, Part J.21. of the labor certification asks whether the beneficiary gained any of the qualifying experience with the petitioner in a position substantially comparable to the position offered, to which the petitioner indicated “no.” Part J.22. of the labor certification asks whether the petitioner paid for any of the beneficiary’s education or training necessary to satisfy any of the petitioner’s job requirements, to which the petitioner indicated “no.” This information demonstrates that the petitioner attested that the beneficiary’s qualifying education, training, and experience were not obtained through employment with the petitioner nor were they paid for by the petitioner. The beneficiary has been employed by the petitioner in the position offered beginning May 30, 2006; therefore, pursuant to the statements on the labor certification, any qualifying education, experience, and training was obtained prior to May 30, 2006. As the evaluator’s conclusion relies on the beneficiary’s experience with the petitioner, the record does not demonstrate that the beneficiary possessed sufficient years of experience as an IT App. Analyst (mainframe), Prog. Analyst or similar duties under a [different job title] prior to the time the beneficiary was hired by the petitioner to meet the “suitable combination of education, experience, or training” requirements of the labor certification.

Further, as discussed below, even if this equivalency were acceptable, the record would not document that the beneficiary possessed sufficient experience to meet the equivalency described by the evaluator, which required “eight years of work experience and professional training in Computer Information Systems,” in addition to the sixty months (five years) experience in the alternate occupation which appears to be required by the terms of the labor certification.

The beneficiary’s claimed qualifying experience must be supported by letters from employers giving the name, address, and title of the employer, and a description of the beneficiary’s experience. *See* 8 C.F.R. § 204.5(l)(3)(ii)(A). The evaluation by Dr. [REDACTED] also relied upon the beneficiary’s experience with [REDACTED] from February 1999 to August 2000; [REDACTED] from February 2005 to July 2005; and [REDACTED] from July 2005 to May 2006. The record does not contain an experience letter from [REDACTED] or [REDACTED] to support the beneficiary’s employment there, and the letter regarding the beneficiary’s experience with [REDACTED] does not comport with the requirements of 8 C.F.R. § 204.5(l)(3)(ii)(A) as it is written by the beneficiary’s former colleague. Experience letters must be from an employer, not a colleague. *Id.* Therefore, the petitioner has not verified the beneficiary’s employment experience as required by the labor certification. This further diminishes the credibility of the evaluation by Dr. [REDACTED] for [REDACTED] which also relies upon the above experience.

Even if the petitioner had provided sufficient evidence to substantiate the beneficiary’s experience in the

evaluation by Dr. [REDACTED] the record does not establish that the beneficiary had 60 months of experience as an "IT App. Analyst (mainframe), Prog. Analyst" or in a position with similar duties under a different job title. Any experience that is used to establish an educational equivalency may not also be used to meet the 60 months of experience required by the labor certification. Accordingly, the record does not reflect that the beneficiary is qualified for the instant position or that the beneficiary meets the education and experience requirements of the labor certification.

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 skilled worker under section 203(b)(3)(A)(i) of the Act.

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. The petitioner must establish that the beneficiary possessed all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The labor certification states that the beneficiary qualifies for the offered position based on his experience with the following companies:

- [REDACTED] as an Associate from October 17, 2000 to October 17, 2001; and as a Software Consultant from October 17, 2001 to January 13, 2005;
- [REDACTED] as a Programmer Analyst from February 14, 2005 to July 26, 2005; and
- [REDACTED] as a Software Developer from July 26, 2005 to May 26, 2006.

No other experience is listed. The beneficiary signed the labor certification under a declaration that the contents are true and correct under penalty of perjury.

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

Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

The record contains an experience letter from the Human Resource & Development Manager from [REDACTED] on the company's letterhead stating that the company employed the beneficiary as an Associate from October 17, 2000 until October 17, 2001, and as a Software Consultant from October 17, 2001 to January 13, 2005. This letter, in conjunction with the evidence in the record, does not demonstrate whether [REDACTED] employed the beneficiary full-time in these positions. The job offer must be for a permanent and full-time position. See 20 C.F.R. §§ 656.3; 656.10(c)(10). DOL precedent establishes that full-time means at least 35 hours or more per week. See Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994). The record contains a certificate from the Academic Council of the [REDACTED]⁵ and the accompanying transcripts, which state that the beneficiary was awarded the Title of GNIIT in Systems Management on January 21, 2003. This certificate states that this program constituted two years of instruction and one year of professional practice. The transcripts in the record state that the beneficiary completed the first two years of instruction on November 29, 2000,⁶ and that he completed the final year of professional practice on June 20, 2002 with [REDACTED]. This calls into question whether the time that the beneficiary was engaged in the professional practice constituted full-time employment. The transcripts for this program also identify the "Evaluation Instruments" that were used to assess the beneficiary's progress, which included "Assignment" and "Seminar." This indicates that there appears to have been an element of instruction in this program, which makes it unclear as to whether the beneficiary was engaged in full-time employment from November 29, 2000 to June 20, 2002.⁷ Therefore, the AAO cannot conclude that the beneficiary's entire time at [REDACTED] which spanned nearly 51 months, constituted full-time employment to meet the requirements of the labor certification. Therefore, the AAO is unable to determine whether the beneficiary had 60 months of experience as an "IT App. Analyst (mainframe), Prog. Analyst" or a position with similar duties.

The record also contains a letter from one of the beneficiary's co-workers at [REDACTED], attesting that the beneficiary worked there from July 26, 2005 to May 26, 2006 as a Software Developer, a period of 10 months. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(A) makes it clear that an experience

⁵ The petitioner has not provided any evidence that [REDACTED] is an accredited institution of higher learning or other independent, objective evidence that courses taken there bear any equivalency to courses taken at an accredited U.S. university.

⁶ The evaluation by [REDACTED] Ph.D. for [REDACTED] states that the beneficiary worked for [REDACTED] from February 1999 to August 2000. This conflicts with the [REDACTED] transcripts which state that the beneficiary completed his first two years of instruction, not work experience, in November 2000. Doubt cast on any aspect of the petitioner's evidence may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988). It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* The petitioner must resolve this discrepancy in any further filings.

⁷ The petitioner must clarify these discrepancies in any further filings.

letter must be from the beneficiary's trainer or employer. Therefore, this letter does not meet the regulatory requirements to establish that the beneficiary meets the experience requirements of the labor certification.

Further, the record does not contain an experience letter from [REDACTED]. Therefore, this experience will not be considered in evaluating whether the beneficiary met the requirements of the labor certification.

The evidence in the record, addressed above, does not establish that the beneficiary possessed the required work experience, in addition to the education requirements, set forth on the labor certification by the priority date. As stated above, the beneficiary worked for [REDACTED] for almost 51 months, but at least 12 months of this work experience is in question regarding whether it was full-time employment due to the beneficiary's professional practice there through the [REDACTED]. The record does not contain the evidence required by 8 C.F.R. § 204.5(l)(3)(ii)(A) regarding the beneficiary's employment with [REDACTED] to verify that the beneficiary worked there from July 26, 2005 to May 26, 2006 as a Software Developer, a period of 10 months. The record does not provide any additional evidence that the beneficiary meets the 60 months of experience as an "IT App. Analyst (mainframe), Prog. Analyst" or any experience in a position with similar duties. Therefore, the petitioner has failed to establish that the beneficiary is qualified for the offered position.

An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).

In summary, the AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum education and experience 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 skilled worker under section 203(b)(3)(A) of the Act.

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

ORDER: The appeal is dismissed.