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

(b)(6)

DATE: JUN 2 5 2013 OFFICE: TEXAS 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, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a software consulting company. It seeks to permanently employ the beneficiary in the United States as a software engineer. The petitioner requests classification of the beneficiary as a 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, 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 May 30, 2011. *See* 8 C.F.R. § 204.5(d).

The director's September 29, 2011 decision denying the petition concludes that the beneficiary did not possess a U.S. bachelor's degree or foreign equivalent as required by the terms of the labor certification.

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

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[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-
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> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time

[1] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

> of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and
> (II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien are qualified for a specific immigrant classification. This fact has not gone unnoticed by federal circuit courts:

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[2] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> 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.

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[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 skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i).

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 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.
H.4-B	Major field of study: Engineering.
H.5.	Training: None required.
H.6.	Experience in the job offered: 24 months.
H.7.	Alternate field of study: Yes.
H.7-A	If yes specify the major field of study: Computer Science/Business Administration.
H.8.	Alternate combination of education and experience: None accepted.
H.9.	Foreign educational equivalent: Accepted.

H.10. Experience in an alternate occupation: Yes.
H.10-A No. of months experience in alternate occupation required: 24.
H.10-B Identify the job title of the alternate occupation: Software Engineer, Programmer, Project lead.
H.14. Specific skills or other requirements:

> Applicant may submit evaluation that she/he has the knowledge equivalent to a person with a bachelor's degree to satisfy the educational requirement listed in H-4. Each three years of progressively responsible work experience will be considered equivalent to the one year of college education.
>
> Any suitable combination of equivalent education, degree/s, training or experience will be acceptable.

As set forth above, the proffered position requires a Bachelor of Science degree in Engineering, Computer Science, or Business Administration and two years of experience in the job offered or two years of experience in the alternate occupation of "Software Engineer/Programmer/Project Lead."

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 three-year degree in Commerce/Business Administration. He listed the institution of study where that education was obtained as the University of

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma from the University of Bombay. It indicates that the beneficiary was awarded a Bachelor of Commerce degree on December 20, 1995 based on a "Three-year Integrated Course." The petitioner additionally submitted a credentials evaluation, dated March 31, 2008, from The evaluation describes the beneficiary's diploma from the as a Bachelor of Commerce degree and concludes that it is equivalent to three years of study toward a four-year Bachelor's degree in Business Administration from a regionally accredited university in the United States. The evaluation further notes that the beneficiary has a diploma from , located in India,[3] which attests that the beneficiary was awarded a Masters Diploma in Computer Science and the evaluator states that this diploma is equivalent to the completion of one year (two semesters) of study in Computer Science from an "accredited technical college" in the United States. The evaluation concludes that the combined education, including the diploma, taken with the three year Bachelor of Commerce degree,

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[3] The evaluation states that is "registered with the Government of India as an accredited institution of post-secondary study and training in Computer Science." The evaluator does not state for what year or years that was registered, or accredited or that the program was specifically accredited at the time that the beneficiary completed his studies. The beneficiary completed the diploma in 1994. Nothing on the beneficiary's completion certificate or the transcript reflects any accreditation.

represents a fourth year of study for a four-year Bachelor's degree in Business Administration with a second major in Computer Science from an "accredited technical college" in the United States.

In response to the AAO's November 29, 2012 Request for Evidence (RFE), the petitioner submitted an experiential credentials evaluation also from (dated January 4, 2013). In the evaluation, the evaluator states that it is his judgment that the beneficiary's three-year Bachelor of Commerce degree from the in India plus the beneficiary's "eight years of progressively more responsible full[-]time professional work experience in software engineering are equivalent to the completion in knowledge of the four-year, Bachelor of Science in Business Administration with a second major in Computer Science, for employment purposes, from an accredited college or university in the United States."

The eight years of employment considered by the credentials evaluator in his experiential evaluation are from January 2003 to January 2011 as a Software Engineer/IT Project Lead with [4] This is the same experience that the petitioner relies on in attempt to establish that the beneficiary has two years of experience in the job offered or two years of experience in the alternate occupation of "Software Engineer/Programmer/Project Lead" as required by the labor certification. The job experience used in attempt to establish the beneficiary's educational equivalency may not be used to also establish the experience required on the labor certification. The job experience required is in addition to the education required. As such, the petitioner has not established that the beneficiary has the necessary two years of experience in the job offered or two years of experience in the alternate occupation as of the priority date. This will be addressed later in the decision.

The director denied the petition on September 29, 2011. She determined that the beneficiary did not possess a single bachelor's degree in engineering, computer science or business administration and, as such, did not meet the education requirements listed on the labor certification. The director specifically noted that "[t]he beneficiary may not combine multiple degrees in multiple fields and request that these be viewed as a single degree for the purposes of meeting the educational requirements listed on the application for labor certification."

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N. Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec.

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[4] 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*).

190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world." *See* http://www.aacrao.org/About-AACRAO.aspx. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." 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.[5] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[6]

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 also discusses postsecondary diplomas, for which the entrance requirement is completion of secondary education. EDGE provides that a postsecondary 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, it may be deemed a foreign equivalent degree to a U.S. bachelor's degree.

EDGE further discusses postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate degree. EDGE states that a postgraduate diploma following a

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[5] *See An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

[6] 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.

two-year bachelor's degree represents attainment of a level of education comparable to one year of university study in the United States. EDGE also states that a postgraduate diploma following a three-year bachelor's degree represents attainment of a level of education comparable to a bachelor's degree in the United States. However, the "Advice to Author Notes" section states:

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

As the beneficiary's studies were completed in 1994 and taken simultaneously with the beneficiary's bachelor's degree, it would be at most a post-secondary diploma and not a post graduate diploma. Further, it is not clear that is an accredited program at the current time, or was an accredited program of study at the time the beneficiary completed those studies. In response to the AAO's RFE, counsel stated that "at the time the beneficiary obtained his Masters Diploma in Computer Science from in 1994, the program was accredited as stated in the credentials evaluation submitted with the petition." Counsel acknowledges that other than the credentials evaluation report the petitioner had no additional evidence to show the program was accredited in 1994. As noted above, the evaluator specifically states that, " is registered with the government of India." The evaluation does not state when the program became registered, or that it was registered or accredited in 1994 when the beneficiary completed his studies. As the petitioner failed to submit evidence to establish that was accredited at the time that the beneficiary completed his studies, the studies, therefore, will not be considered when determining whether the beneficiary possesses a bachelor's degree as required by the labor certification.

Based on the evaluations that the petitioner submitted, and the conclusions of EDGE, the evidence in the record is not sufficient to establish that the beneficiary's Bachelor of Commerce degree is the foreign equivalent of a U.S. Bachelor's degree in Engineering, Computer Science, or Business Administration as required by the terms of the labor certification. Additionally, as noted above, the beneficiary's education at is insufficient as well to establish that the beneficiary has the foreign equivalent of a U.S. Bachelor's degree. Neither of the petitioner's evaluations submitted assert that the beneficiary has one degree that is the four-year foreign equivalent to a U.S. bachelor's degree. Instead, the petitioner seeks to rely on either the beneficiary's combined education, or combined education and work experience to meet the equivalent of a 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.

As noted above, H.14 of the labor certification, specific skills or other requirements, provides as follows:

> Applicant may submit evaluation that she/he has the knowledge equivalent to a person with a bachelor's degree to satisfy the educational requirement listed in H-4. Each three years of progressively responsible work experience will be considered equivalent to the one year of college education.
>
> Any suitable combination of equivalent education, degree/s, training or experience will be acceptable.

In the AAO's RFE (November 29, 2012) the petitioner was instructed that if it claimed that its organization intended the terms of the labor certification to require an alternative to a U.S. bachelor's degree or a single foreign equivalent degree, then it should submit evidence of the petitioner's claimed intent. Such evidence would be of the petitioner's intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.

DOL has provided the following field guidance for interpreting labor certification requirements: when the labor certification states that a "bachelor's degree in computer science" is required, and the beneficiary has a four-year bachelor's degree in computer science from the University of Florence, "there is no requirement that the employer include 'or equivalent' after the degree requirement" on the Form ETA 750 or in its advertisement and recruitment efforts. *See* Memo. from 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). Further, where the Form ETA 750 indicates that a "U.S. bachelor's degree or the equivalent" may qualify an applicant for a position, where no specific terms are set out on the Form ETA 750 or in the employer's recruitment efforts to define the term "equivalent," "we understand ['equivalent'] to mean the employer is willing to accept an equivalent foreign degree." *See* Ltr. From Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to INS (October 27, 1992). Where the Form ETA 750 states that work experience or a certain combination of lesser diplomas or degrees may be substituted for a bachelor's degree, "the employer must specifically state on the ETA 750, Part A as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative [to the degree] in order to qualify for the job." *See* Memo. from 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). State Workforce Agencies should "request the employer provide the specifics of what is meant when the word 'equivalent' is used." *See* Ltr. From Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to

Esq., (March 9, 1993). Finally, 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." *Id.* To our knowledge, the field guidance memoranda referred to here have not been rescinded.

Specifically, the AAO requested that the petitioner provide a copy of the documentation prepared in accordance with the DOL labor certifications regulations at 20 C.F.R. § 656 (2011), including a signed recruitment report, the prevailing wage determination, all online and print recruitment conducted for the position, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts. The petitioner was asked to also include any other communications with the DOL that may be probative of its intent, such as correspondences or documents generated in response to an audit.

The petitioner did not provide any of the requested documentation of its intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers. The petitioner did not address why these documents were not submitted, or state that they were unavailable. 20 C.F.R. § 656.10(f) related to "*Retention of documents,*" states, "Copies of applications for permanent employment certification filed with the Department of Labor and all supporting documentation must be retained by the employer for 5 years from the date of filing the *Application for Permanent Employment 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).

In regard to the AAO's request for documentation of the petitioner's intent concerning the actual minimum requirements of the position as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers, the petitioner stated that it, "drafted the labor certification application with the beneficiary in mind, knowing that he did not have a U.S. Bachelor's or single source foreign equivalent degree, [is] evidence that the petitioner intended to accept alternate qualifications that allowed for filing in the skilled worker category."

The AAO does not agree. Evidence of such intent would be proof that the petitioner advertised the position to all U.S. workers stating alternatives to a U.S. bachelor's degree were acceptable for the position.[7] The purpose of the instant visa category is to provide employers with foreign workers to fill positions for which U.S. workers are unavailable. The petitioner may not seek a labor

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[7] 20 C.F.R. § 656.17(f) *Advertising requirements* [must] . . .

. . . .

(3) Provide a description of the vacancy specific enough to apprise the U.S. workers of the job opportunity for which certification is sought . . .

. . . .

(6) Not contain any job requirements or duties which exceed the job requirements or duties listed on the ETA Form 9089.

certification with one particular worker in mind and not provide all qualified American workers with a meaningful opportunity to apply for the position by not informing those who may be interested of all qualifying factors for the position.[8]

The AAO notes 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. 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).

Counsel cites to *Grace Korean United Methodist Church v. Michael Chertoff,* 437 F. Supp. 2d 1174 (D. Or. 2005). In *Grace Korean*, 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.

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[8] The regulation at 20 C.F.R. § 656.10(c) states in pertinent part that:

> (c) *Attestations.* The employer must certify to the conditions of employment listed below on the *Application for Permanent Employment Certification* under penalty of perjury under 18 U.S.C. 1621 (2). Failure to attest to any of the conditions listed below results in a denial of the application.
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> . . . .
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> (8) The job opportunity has been and is clearly open to any U.S. worker;
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> (9) The U.S. workers who applied for the job opportunity were rejected for lawful job-related reasons.

The petitioner was asked to submit recruitment documentation of how it expressed the position's requirements to DOL and to potentially qualified U.S. workers to demonstrate its intent, that it intended to allow an individual to qualify for the position based on more than just a four-year bachelor's degree. As noted above, the petitioner failed to respond to this inquiry. The petitioner did not demonstrate that it advertised any equivalent to a bachelor's degree to potentially qualified U.S. workers based on any combination of education and/or combination of education and experience, and did not demonstrate that if any U.S. workers responded, it considered workers with other than just four year bachelor's degrees. The AAO allowed the petitioner a specific opportunity to address and evidence its intent and the petitioner failed to provide any of the requested documentation in support of this inquiry that might have demonstrated its intent. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. *See* 8 C.F.R. § 103.2(b)(14).

Therefore, the petitioner has 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 on the labor certification in H.4. and expressed during the labor certification process to the DOL and potentially qualified U.S. workers.[9] 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.

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. The petitioner failed to establish that the beneficiary meets the job experience requirements of the labor certification. 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 has the experience for the position offered. The petitioner must establish that the beneficiary possessed

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[9] In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the offered position. *See Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). The best evidence of the petitioner's intent concerning the actual minimum educational requirements of the offered position is evidence of how it expressed those requirements to the DOL and in recruitment 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.

all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(l), (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 Matter of Silver Dragon Chinese Restaurant,* 19 I&N Dec. 401, 406 (Comm. 1986). *See also, 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).

In the instant case, the labor certification states that the offered position requires two years of experience in the job offered, or two years of experience in the alternate occupation of Software Engineer, Programmer, or Project Lead.

On the labor certification, the beneficiary lists the following experience, prior to his position with the petitioner, beginning in January 2011: from January 1, 2007 to January 4, 2011 as an IT Project Lead; from January 1, 2003 to December 31, 2006, as a Software Engineer; and from June 1, 2001 to January 26, 2003, as a Software Programmer.

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 petitioner initially submitted the following letters: a letter from dated February 2, 2011, which stated that the beneficiary was employed with in India from January 1, 2003 to December 31, 2006, and that he was employed with from January 1, 2007 to January 4, 2011. The letter states "at the time of his leaving us, he was designated as IT Project Lead." This letter does not, however, state what the beneficiary's job title was when he began employment, or state any of his job duties during any of his employment with either *See* 8 C.F.R. § 204.5(l)(3)(ii)(A).

The petitioner also submitted several letters from A letter dated January 24, 2003, states, "this is to inform you that has transferred its entire business . . . to ." This does not, however, state any dates of employment for the beneficiary, position title, or any job duties for the beneficiary. The petitioner also submitted the beneficiary's offer letter from dated June 1, 2001, with an anticipated June 4, 2001 start date. It states the title of programmer, but does not list any job duties. A third letter, dated January 14, 2002, states, "further to our appointment letter dated 01st June 2001, we are pleased to inform you that your services are being confirmed as Programmer w.e.f. [presumably, with effective force] 01st September 2001." This letter does not include any job duties, and casts doubt on the June 1, 2001 claimed start. Further, it is unclear why the letter is dated January 14, 2002, confirming a date four months prior in September 2001. It is incumbent upon the petitioner to resolve any inconsistencies in

the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.*, at 591.

The AAO alerted the petitioner to deficiencies in the letter submitted in the AAO's RFE and requested that the petitioner submit documentation to demonstrate that the beneficiary had the two years of experience required for the position offered.

The petitioner submitted another letter from which is also dated February 2, 2011, as is the first letter. The second letter states the beneficiary's title and job duties with both However, as noted above, the evaluator relies on all of the beneficiary's eight years of experience with from January 2003 to January 2011 in the January 4, 2013, Worldwide Education Evaluators, Inc. evaluation to conclude that based on the beneficiary's combined education and experience, that the beneficiary has the equivalent of a U.S. Bachelor's degree with a major in Business Administration and a second major in Computer Science. The petitioner may not rely on the same experience to show that the beneficiary has both the required education and experience for the position offered.

As the letters fail to state any dates of specific employment or job duties, and the petitioner submitted an evaluation using all the beneficiary's experience with to reach the equivalent of a bachelor's degree, the petitioner has failed to demonstrate that the beneficiary has the required two years of experience in the position offered, or in the alternate designated occupation.

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).

Accordingly, 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.