



U.S. Citizenship  
and Immigration  
Services

(b)(6)

DATE: JUN 25 2013

OFFICE: NEBRASKA SERVICE CENTER FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

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

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, 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 is a designer and manufacturer of interior automotive components. It seeks to employ the beneficiary permanently in the United States as a design engineer. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, 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 July 8, 2008. *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.<sup>1</sup>

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

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

(i) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 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).<sup>2</sup> *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.

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

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

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

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

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

The labor certification made by the Secretary of Labor . . . pursuant to section 212(a)(14) of the [Act] is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating:

The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).

The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer.

*Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984).

Therefore, it is the DOL's responsibility to determine whether there are qualified U.S. workers available to perform the offered position, and whether the employment of the beneficiary will adversely affect similarly employed U.S. workers. It is the responsibility of USCIS to determine if the beneficiary qualifies for the offered position, and whether the offered position and beneficiary are eligible for the requested employment-based immigrant visa classification.

In the instant case, the petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A).<sup>3</sup> The AAO will first consider whether the petition may be approved in the professional classification.

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<sup>3</sup> Employment-based immigrant visa petitions are filed on Form I-140, Immigrant Petition for Alien Worker. The petitioner indicates the requested classification by checking a box on the Form I-140. The Form I-140 version in effect when this petition was filed did not have separate boxes for the professional and skilled worker classifications. In the instant case, the petitioner selected Part 2, Box e of Form I-140 for a professional or skilled worker. The petitioner did not specify elsewhere in the

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

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

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

Section 101(a)(32) of the Act defines the term “profession” to include, but is not limited to, “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” If the offered position is not statutorily defined as a profession, “the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.” 8 C.F.R. § 204.5(l)(3)(ii)(C).

In addition, the job offer portion of the labor certification underlying a petition for a professional “must demonstrate that the job requires the minimum of a baccalaureate degree.” 8 C.F.R. § 204.5(l)(3)(i)

The beneficiary must also meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing’s Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Therefore, a petition for a professional must establish that the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor’s degree as a minimum for entry; the beneficiary possesses a U.S. bachelor’s degree or foreign equivalent degree from a college or university; the job offer portion of the labor certification requires at least a bachelor’s degree or foreign equivalent degree; and the beneficiary meets all of the requirements of the labor certification.

It is noted that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) uses a singular description of the degree required for classification as a professional. In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor’s degree as a

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record of proceeding whether the petition should be considered under the skilled worker or professional classification. After reviewing the minimum requirements of the offered position set forth on the labor certification and the standard requirements of the occupational classification assigned to the offered position by the DOL, the AAO will consider the petition under both the professional and skilled worker categories.

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's degree from [REDACTED] completed in 2000.

The record contains a copy of the beneficiary's technical engineering diploma and transcripts from [REDACTED] issued in 2000 and 2009, respectively.

The record also contains two credentials evaluations: one dated May 16, 2003, prepared by [REDACTED] for The [REDACTED] and one dated September 21,

2009, prepared by [REDACTED] for [REDACTED]. The [REDACTED] Evaluation describes the beneficiary's diploma from [REDACTED] as a Title of Technical Industrial Engineer and concludes that it is equivalent to a Bachelor of Science in Industrial Engineering in the United States, while the [REDACTED] describes the beneficiary's diploma as an Official University Title of Technical Engineer in Industrial Engineering and concludes that it is equivalent to a Bachelor of Science in Industrial Engineering Technology in the United States. The petitioner additionally submitted an evaluation report of the beneficiary's academic record dated October 23, 2009 from [REDACTED] describes the beneficiary's diploma as an Official University Title of Technical Industrial Engineer and concludes that it is equivalent to a Bachelor of Science in Industrial Engineering Technology in the United States.

The record also contains a letter from [REDACTED] Assistant Dean of [REDACTED], Graduate School of Arts and Sciences, dated December 23, 2008 [REDACTED]. The letter discusses [REDACTED] policy toward admissions of students who possess three-year European degrees and the Bologna Accord. The [REDACTED] relies on this letter in its evaluation of the beneficiary's diploma.

The [REDACTED] Evaluation states that the beneficiary completed advanced bachelor's-level program of studies in Industrial Engineering and general liberal arts studies. The general liberal arts coursework, according to the [REDACTED] Evaluation, consisted of courses in "language arts, the social sciences, mathematics, and the sciences" as is required in a bachelor's degree program in the U.S. However, a review of the beneficiary's transcript and the curriculum description do not reveal a liberal arts curriculum. Other than the two English-language classes the beneficiary took, every course relates to his degree in industrial engineering.

The [REDACTED] Evaluation states that the technical engineer diploma (*Ingeniero Technico*) normally requires a minimum of three years of study. The evaluation further states that it appears that the degree was awarded based on a 1982 curriculum in which four years of study were required. The record contains a copy of the 1982 curriculum and the 1995 curriculum with certified English translation. The beneficiary began his coursework in 1994 and graduated in 2000. The beneficiary, however, remained a part-time student completing one course in 1994, two in 1995, and two in 1999. In comparing the beneficiary's transcripts to the 1982 and 1995 curriculum's course list, it is noted that the 1982 plan requires 32 courses to complete the program, while the 1995 plan requires 25 courses to complete the program. The beneficiary completed 26 courses, and he did not complete all of the courses listed under the 1982 plan. It is noted that the beneficiary only took seven of the ten second-year courses and six of the eleven fourth-year courses. Based on the information in the record, the beneficiary completed the equivalent of the three-year technical engineering diploma.

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](http://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 June 20, 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 June 20, 2013). 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.<sup>4</sup> If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>5</sup>

According to EDGE, a technical engineer (*Ingeniero Technico*) diploma from Spain is comparable to “three years of university study in the United States.”

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in industrial engineering.

The AAO issued a Request for Evidence (RFE) on March 27, 2013. In the RFE, the AAO noted the discrepancies in the evaluations' conclusions regarding the type of degree the beneficiary possesses. The AAO also noted that, based on the information in the record, it appears that the beneficiary completed a three-year degree and not a four-year degree as the petitioner contends. The AAO informed the petitioner of the conclusions of EDGE in the RFE.

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<sup>4</sup> See *An Author's Guide to Creating AACRAO International Publications* available at [http://www.aacrao.org/Libraries/Publications\\_Documents/GUIDE\\_TO\\_CREATING\\_INTERNATIONAL\\_PUBLICATIONS\\_1.sflb.ashx](http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx).

<sup>5</sup> In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign “baccalaureate” and foreign “Master's” degree were only comparable to a U.S. bachelor's degree. 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.

In response to the AAO's RFE, counsel states that there are duplicate courses on the list of old courses and new courses. Therefore, according to counsel, there are actually 26 courses required to graduate under the old program, instead of 32. Additionally, counsel refers to the Educational Organization Plan of Studies Schedule Distribution by Course and states that the university required 26 courses under the old plan which the students were required to complete in four years. Counsel further argues that the old plan required 30 weeks of study and submits the academic calendars of various U.S. universities to show that in the U.S., 30 weeks of study are also required.

The new program contains 25 required courses to graduate. Therefore, whether the 25 courses in the new program were completed in three years, or the 26 courses under the old program were completed in four years, the petitioner has not overcome the conclusions of EDGE that the degree of *Ingeniero Technico* is equivalent to three-years of university study in the U.S. Additionally, there is nothing in the record to support counsel's conclusion that the courses listed under the old program are duplicate courses. 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).

In the AAO's RFE, the petitioner was also asked to explain how the Evaluation Service Report awarded U.S. semester credit hours to the beneficiary's courses. The hours per week, which are assigned to each course on the 1982 Studies Plan provided by the [REDACTED] and accompanied by an English translation, do not correspond to the credit hours assigned to each course by the evaluator. In response, the petitioner submits a copy of a letter from [REDACTED] Director, [REDACTED] (Evaluation Service Letter) dated April 11, 2013. In the [REDACTED] Letter, [REDACTED] explains that she assigned credits to the beneficiary's courses as follows: "Credit allocation in the U.S. semester credits is based on 1) sample reports in our files; 2) courses actually examined with examination grades; 3) a 'prorating' of credits based upon programs completed by students in a similar program in the U.S."

In the Educational Assessment Evaluation, the evaluator, [REDACTED] states, "The credits awarded for each course are overall somewhat higher than a typical U.S. course credit (i.e. many courses are 5 credits, typically 4 credits is the most awarded for one course in the United States) and [the] transcript does not reflect the credit for the final project, however, this is a requirement for the degree and is verified on the document."

The 1982 Studies Plan assigns hours per week for each course. However, the beneficiary's transcript does not provide credits for each course. Based on the conclusion of the Evaluation Service Report, the beneficiary completed the equivalent of 123 U.S. credit hours. Based on the statements in the [REDACTED] Evaluation, the beneficiary completed 103 U.S. credit hours.<sup>6</sup> 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile

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<sup>6</sup> This number reflects the hours per week assigned to each course on the 1982 Studies Plan.

such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Id.* at 592.

Additionally, the Evaluation Service Letter did not explain how the evaluator arrived at her conclusion that the beneficiary completed 123 credits, and why the hours per week assigned to each course by the Educational Organization Plan of Study Schedule Distribution by Course were not taken into consideration when evaluating the beneficiary's degree. The evaluator provided a general statement without providing any quantitative explanation. The evaluator arrived at a conclusion different than that of the Educational Organization Plan of Study Schedule Distribution by Course and the Educational Assessment Evaluation. The petitioner must resolve such inconsistencies through independent, objective evidence. *Matter of Ho, supra*, at 592. It has failed to do so.

In its RFE, the AAO also notified the petitioner of the inconsistencies in the evaluations' conclusions as to the degree that the beneficiary possesses. The Educational Assessment Evaluation and the Evaluation Service Report refer to the beneficiary's degree as a technical industrial engineering diploma (*Ingeniero Technico*), while the [REDACTED] Evaluation refers to the beneficiary's degree as "Title of Technical Industrial Engineer." The AAO notes that both degrees exist in the Spanish higher-education system, although both degrees are three-year degrees and not considered the equivalent to a U.S. bachelor's degree.

In response to the AAO's RFE, counsel argues that EDGE was published in the mid-2000s and therefore, does not contain any information about older degrees such as the beneficiary's. In the Evaluation Service Letter, Ms. Katz states, "[a]s this degree program was completed between 1994-2000, this is not listed in the AACRAO EDGE database. The AACRAO EDGE database, unfortunately, does not provide listings of older degrees, or degree programs no longer offered." No evidence is provided to support the conclusion that degrees awarded prior to the mid-2000s, when EDGE was published, are not contained in the database. Additionally, this statement is incorrect. EDGE routinely provides information regarding credentials obtained during time periods prior to the mid-2000s. Also, it routinely provides information on changes to an education system and the credentials awarded, and those changes are reported on the country pages.<sup>7</sup>

The Educational Assessment Evaluation's reliance on the Bologna Accord is misplaced. The Educational Assessment Evaluation stresses that [REDACTED] and other Ivy-league universities now accept degrees from those countries participating in the Bologna Accord. The Bologna Accord was signed in 1999 with the objective of creating the European Higher Education Area (EHEA) by 2010 and beginning to implement reforms to the higher education system in Europe known as the Bologna Process.<sup>8</sup> The Bologna Process consists of gradually reforming the education system and restructuring the degree programs of the forty-five European countries who are currently signatories to the Bologna Accord.<sup>9</sup> The Bologna process is a process, and the reforms will

<sup>7</sup> See <http://edge.aacrao.org/info.php> (accessed June 18, 2013).

<sup>8</sup> See <http://www.ehea.info/> (accessed June 18, 2013).

<sup>9</sup> See <http://www.wes.org/educators/pdf/BolognaPacket.pdf> (accessed June 18, 2013).

not occur simultaneously or immediately. Austria and Italy, among the first countries to implement the agreement and restructure their higher education systems, did not graduate their first students under the Bologna Process until 2004.<sup>10</sup>

In this case, the beneficiary graduated in 2000 and began the program in 1994. Both dates precede the first Bologna Process degrees awarded in Europe in 2004 and the signing of the Accord in 1999. The AAO notes that by 1999, the beneficiary had finished his coursework. Additionally, there is no evidence in the record that the beneficiary's degree program underwent the process of reformation and restructuring known as the Bologna Process at the time the beneficiary was completing his studies. The degree which the beneficiary holds is not part of the Bologna Process and will not be considered as the equivalent of a U.S. bachelor's degree.

The University Letter also states that even though it is the author's understanding that all of the Ivy graduate schools honor the Bologna Accord, the Graduate School of Arts and Sciences still forwards all applications from European countries who have signed the Bologna Accord to the faculty for review on a case-by-case basis to determine if the student has sufficient preparation and knowledge to handle the rigors of their programs. Thus, the Bologna degrees are not accepted without further review of the individual degree program to determine admission. Therefore, the degrees from countries participating in the Bologna Process are not always considered the equivalent of a U.S. bachelor's program for admission to Ivy-league graduate schools in the U.S. as the Educational Assessment Evaluation states.

The petitioner relies on the beneficiary's *Ingeniero Technico* degree as being equivalent to a U.S. bachelor's degree.<sup>11</sup> 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.

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.

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<sup>10</sup> *Id.*

<sup>11</sup> The *Ingeniero Technico* degree is considered equivalent to three years of university study in the U.S., as stated in the EDGE report attached to the RFE. Based on the information contained in the record, the beneficiary has not established that the beneficiary completed a four-year degree which is the foreign equivalent to a U.S. bachelor's degree. Thus, the record demonstrates that the beneficiary has completed the equivalent of three years of university study in the U.S.

The AAO will also consider whether the petition may be approved in the skilled worker classification. Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. *See also* 8 C.F.R. § 204.5(1)(2).

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

- H.4. Education: Bachelor's degree.
- H.5. Training: None required.
- H.6. Experience in the job offered: Twenty-four months.
- H.7. Alternate field of study: Mechanical Engineering or related discipline with specific engineering app.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: Twenty-four months (2 years) in the related occupation of door-module-related position.
- H.14. Specific skills or other requirements: Two years of experience in the job offered in the design and development of door trip modules, or in another door- module-related position, of which at least one year must include the design, development and styling of automotive concepts and/or feasibility prototypes. Also requires at least 2 years of experience designing with CATIA V4. Experience can be gained concurrently. Employer will accept any suitable combination of education, training or experience.

As is discussed above, the beneficiary possesses a technical industrial engineer diploma (*Ingeniero Technico*) from [REDACTED], which is equivalent to three years of university study in the United States.

In the AAO's RFE, the petitioner was asked to submit a copy of the signed recruitment report required by 20 C.F.R. § 656.17(g)(1), together with copies of the prevailing wage determination, all online, print and additional recruitment conducted for the position, the job order, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts. Additionally, the RFE requested any other communications with the DOL that may be probative of the petitioner's intent, such as correspondences or documents generated in response to an audit.

In response to the AAO's RFE, counsel states that the petitioner did not intend to rely on any alternative, as it believes "that the beneficiary's single foreign degree is equivalent to a U.S. bachelor's 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.<sup>12</sup> The record does

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<sup>12</sup> The DOL has provided the following field guidance: "When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the [labor certification] as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." See Memo. from [REDACTED] Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994). The DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [USCIS] to accept the employer's definition." See Ltr. From [REDACTED] Certifying Officer, U.S. Dept. of Labor's Empl. & Training

not contain any evidence that it intended the labor certification to require an alternative to a U.S. bachelor's degree or a single foreign equivalent degree, as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.<sup>13</sup> The petitioner has failed to establish that the terms of the labor certification are ambiguous and that the petitioner intended the labor certification to require less than a four-year U.S. bachelor's or foreign equivalent degree, as that intent was expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.

Therefore it is concluded that the terms of the labor certification require a four-year U.S. bachelor's degree in industrial engineering or alternate field of study of mechanical engineering or related discipline with specific engineering app. or a foreign equivalent degree. The beneficiary does not possess such a degree. The petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date. Therefore, the beneficiary does not qualify for classification as a skilled worker.<sup>14</sup>

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification specified an educational requirement of four years of college and a "B.S. or foreign equivalent." The district court determined that "B.S. or foreign equivalent" relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* at 11-13. Additionally, the court determined that the word "equivalent" in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational

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Administration, to [REDACTED] Esq., [REDACTED] (March 9, 1993). The DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree." See Ltr. From [REDACTED] Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to [REDACTED] INS (October 27, 1992). To our knowledge, these field guidance memoranda have not been rescinded.

<sup>13</sup> In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the offered position. See *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). The best evidence of the petitioner's intent concerning the actual minimum educational requirements of the offered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence ensures that the stated requirements of the offered position as set forth on the labor certification are not incorrectly expanded in an effort to fit the beneficiary's credentials. Such a result would undermine Congress' intent to limit the issuance of immigrant visas in the professional and skilled worker classifications to when there are no qualified U.S. workers available to perform the offered position. See *Id.* at 14.

<sup>14</sup> In addition, for classification as a professional, the beneficiary must also meet all of the requirements of the offered position set forth on the labor certification. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at 14.<sup>15</sup> In addition, the court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at 7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* See also *Maramjaya v. USCIS, Civ. Act No. 06-2158* (D.D.C. Mar. 26, 2008)(upholding USCIS interpretation that the term "bachelor's or equivalent" on the labor certification necessitated a single four-year degree). In the instant case, unlike the labor certifications in *Snapnames.com, Inc.* and *Grace Korean*, the required education is clearly and unambiguously stated on the labor certification and does not include the language "or equivalent" or any other alternatives to a four-year bachelor's degree.

In summary, the petitioner has failed to establish that the beneficiary possessed a U.S. bachelor's degree or a foreign equivalent degree from a college or university as of the priority date. The petitioner also failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act or as a skilled worker under section 203(b)(3)(A)(i) of the Act.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.

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<sup>15</sup> In *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), the court concluded that USCIS "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." However, the court in *Grace Korean* makes no attempt to distinguish its holding from the federal circuit court decisions cited above. Instead, as legal support for its determination, the court cites to *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)(the U.S. Postal Service has no expertise or special competence in immigration matters). *Id.* at 1179. *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws. See section 103(a) of the Act.