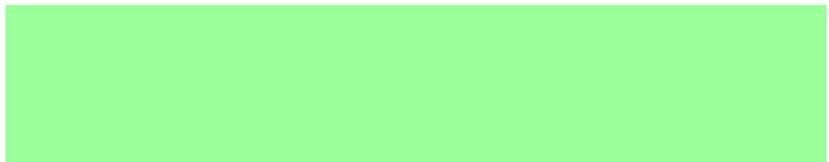




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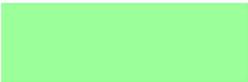
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OFFICE: TEXAS SERVICE CENTER

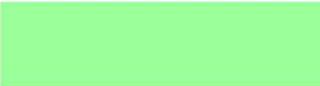
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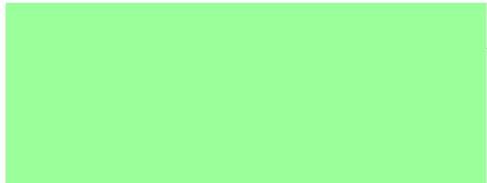
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner publishes educational materials, business information, and books. It seeks to employ the beneficiary permanently in the United States as an audit manager. On Part 2 of the Form I-140, Immigrant Petition for Alien Worker, the petitioner marked box "e," requesting classification of the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii).

As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the Department of Labor (DOL), accompanies the petition. The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is April 13, 2011. *See* 8 C.F.R. § 204.5(d).

The director's decision concludes that the petitioner failed to establish the beneficiary's qualifications for the offered position. Specifically, the director found that the petitioner did not establish that the beneficiary, by the petition's priority date, possessed at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university, as required by the labor certification and for professional classification.

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 on 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 DOL certified the labor certification in this matter. The DOL's role in this process is set forth at section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182 (a)(5)(A)(i), 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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<sup>1</sup> The instructions to Form I-290B, Notice of Appeal or Motion, which the regulation at 8 C.F.R. § 103.2(a)(1) incorporates into the regulations, allow submissions of additional evidence on appeal. The record in the instant case provides no reason to reject any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

(I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

It is significant that none of the above inquiries assigned to the DOL, or the regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether the position and the alien qualify 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 [of the Act] 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) [of the Act].<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*, 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) [of the Act], 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 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.*

*Id.* at 1009 (emphasis added). The Ninth Circuit, citing *K.R.K. Irvine*, 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, however, 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.

### **The Beneficiary Must Meet the Qualifications of the Requested Classification**

In the instant case, the petitioner requests classification of the beneficiary as a professional. Section 203(b)(3)(A)(ii) of the Act grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. *See also* 8 C.F.R. § 204.5(1)(2).

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) states, in part:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent

degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

Section 101(a)(32) of the Act defines the term "profession" to include "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 accompanying 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, by the petition's priority date, meet all of the requirements of the offered position as set forth on the labor certification. 8 C.F.R. § 103.2(b)(1), (12); *see also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Therefore, a petition for a professional must establish that: section 101(a)(32) of the Act includes the occupation of the offered position as a profession or that the position requires a bachelor's degree as a minimum for entry; the beneficiary possesses at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university; and the job offer portion of the labor certification requires at least a bachelor's degree or a foreign equivalent degree. The beneficiary must also meet all of the requirements of the offered position as set forth on the labor certification.

At issue in this case is whether the beneficiary possesses a U.S. bachelor's degree or a foreign equivalent degree from a college or university.

As noted above, classification as a professional requires the beneficiary to possess at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university. The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) describes the required degree in the singular. In 1991, when the Immigration and Naturalization Service (now USCIS or the Service) published the final rule for the regulation at 8 C.F.R. § 204.5 in the Federal Register, the Service responded to criticism that the regulation prevented 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 noted that "both 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 a 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).

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) 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(1)(3)(ii)(C) (emphasis added). For aliens of exceptional ability, Congress broadly required “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. For the professional category, by contrast, the degree must clearly be from a “college or university.”

In *Snapnames.com, Inc. v. Chertoff*, the federal court held that, in the case of a professional or an advanced degree professional where a statute requires the beneficiary to hold a baccalaureate degree, USCIS properly concluded that a single U.S. bachelor’s degree or a single foreign equivalent degree is required. 2006 WL 3491005 (D.Or. Nov. 30, 2006); *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 a foreign equivalent degree).

Thus, the plain meanings of the Act and the regulations require the beneficiary of a professional petition, at a minimum, to possess a single degree from a college or university that is either a U.S. baccalaureate degree or a foreign equivalent degree.

In the instant case, the labor certification states that the beneficiary possesses a bachelor’s degree in accounting from the [REDACTED] India. The petitioner submitted a copy of the beneficiary’s diploma, showing that she received a Bachelor of Commerce degree in April 2000. The petitioner also submitted copies of two certificates from [REDACTED]. One certificate indicates that the beneficiary passed the [REDACTED] final examination in November 2001; the other indicates that the institute admitted her as a member on February 2, 2002.

The petitioner also submitted three evaluations of the beneficiary’s foreign education credentials, the last two in response to the director’s December 29, 2011 Notice of Intent to Deny the petition. The first evaluation, dated April 20, 2005, is from [REDACTED] of [REDACTED]. This evaluation describes the beneficiary’s degree from the [REDACTED] as the equivalent of three years of university towards a U.S. bachelor’s degree. The evaluation concludes that the beneficiary’s [REDACTED] final examination certificate and associate membership, “considered together with” her Bachelor of Commerce degree, is “equivalent to the attainment of a Bachelor of Science degree in Accounting,” awarded by a U.S. college or university.

The second evaluation, dated January 13, 2012, is from [REDACTED] of [REDACTED]. This evaluation concludes that the beneficiary’s [REDACTED] certificates, by themselves, equal a U.S. Bachelor of Science degree in accounting. The third evaluation, dated January 15, 2012, is from [REDACTED].

of . Like evaluation, this evaluation equates the beneficiary's certificates, by themselves, to a U.S. Bachelor of Science degree in accounting.

A bachelor's degree generally requires a four-year program of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). Because the record does not contradict determination that the beneficiary's Bachelor of Commerce degree equals three years of undergraduate study in the U.S., the AAO cannot consider the beneficiary's three-year Indian degree as a foreign equivalent degree of a U.S. bachelor's degree. The AAO therefore affirms the director's decision that the petitioner has not demonstrated that the beneficiary's Bachelor of Commerce degree constitutes a foreign equivalent degree of a U.S. bachelor's degree.

also concludes that the beneficiary's Bachelor of Commerce degree, combined with her certificates, equals a U.S. Bachelor of Science degree in accounting. As discussed above, however, the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) requires the beneficiary of a professional petition to possess a single degree that is either a U.S. baccalaureate degree or a foreign equivalent degree. Therefore, the combination of the beneficiary's certificates with her Bachelor of Commerce degree does not represent a single foreign equivalent degree. *See Snapnames.com*, 2006 WL 3491005, at \*10 (upholding USCIS determination that a beneficiary with a three-year bachelor of commerce degree and membership does not possess a foreign equivalent degree as required for professional classification). The AAO therefore also agrees with the director's finding that the petitioner failed to establish that the combination of the beneficiary's Bachelor of Commerce degree and her certificates equals a foreign equivalent degree.

Unlike evaluation, the evaluations of and equate the beneficiary's certificates, by themselves, with a U.S. bachelor's degree in accounting. The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C), however, requires evidence of a baccalaureate degree for professional classification "in the form of an official college or university record." The record does not establish that is a college or university. Rather, the record shows that the institute is a statutory body that regulates the audit and accounting profession in India and provides professional credentials rather than degrees. The certificates therefore do not constitute "an official college or university record" as the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) requires.

As the AAO informed the petitioner in its Notice of Intent to Dismiss the appeal and Request for Evidence, the AAO also reviewed the Electronic Database for Global Education (EDGE), which was created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, the 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.* The EDGE is "a web-based resource for the evaluation of foreign educational credentials." *See* <http://edge.aacrao.org/info.php>. Authors of reports in the EDGE must work with a publication consultant and a liaison with the

AACRAO's National Council on the Evaluation of Foreign Educational Credentials.<sup>3</sup> If placement recommendations are included, the liaison works with the author to respond, and the author's publication is subject to final review by the entire Council. *Id.* USCIS considers the EDGE to be a reliable, peer-reviewed source of information about foreign education credentials.<sup>4</sup>

Information in the EDGE states that the beneficiary's Bachelor of Commerce degree "represents attainment of a level of education comparable to ... three years of university study in the United States."

The EDGE also states that the beneficiary's [REDACTED] final examination and membership certificates are comparable to a U.S. bachelor's degree. But the EDGE describes [REDACTED] membership as a "professional qualification" awarded upon passing the [REDACTED] final examination. Indeed, the EDGE refers to the [REDACTED] in its "Overview" on the Indian educational system in section (iii), which discusses "non-university education."

Counsel argues that the beneficiary's Bachelor of Commerce degree constitutes an official university record as the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires. The AAO agrees, but the degree does not constitute a foreign equivalent degree as the regulation also requires. The record does not contain any evidence that the beneficiary's bachelor's degree is a foreign equivalent degree of a U.S. bachelor's degree. Rather, uncontroverted evidence in the record shows that the beneficiary's Bachelor of Commerce degree equals only three years of undergraduate study in the U.S. A combination of the beneficiary's degree and the [REDACTED] certificates also fails to meet the regulation's requirements because the *two* academic awards do not constitute a *single* degree.

The record therefore fails to establish that the beneficiary possesses a single degree from a college or university that is either a U.S. bachelor's degree or a foreign equivalent degree as required for professional classification.

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<sup>3</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>4</sup> In *Confluence Intern., Inc. v. Holder*, the federal court determined that the AAO provided a rational explanation for its reliance on AACRAO information to support its decision. 2009 WL 825793 (D.Minn. March 27, 2009). In *Tisco Group, Inc. v. Napolitano*, the federal court found that USCIS properly considered education evaluations in the record and information from the EDGE to conclude that the beneficiary's 3-year foreign "baccalaureate" and foreign "Master's" degree equated to a U.S. bachelor's degree. 2010 WL 3464314 (E.D.Mich. August 30, 2010). In *Sunshine Rehab Services, Inc. v. USCIS*, the federal court upheld USCIS's determination that the beneficiary's 3-year bachelor's degree did not constitute a foreign equivalent degree. 2010 WL 3325442 (E.D.Mich. August 20, 2010). Specifically, the court concluded that USCIS did not abuse its discretion in preferring foreign education equivalency information in the EDGE to the petitioner's proffered evidence. The court also noted that the labor certification accompanying the petition required a foreign equivalent degree that precluded a combination of education and experience.

On appeal, counsel asserts that the director erred in disregarding “the authority of the [redacted] to grant degrees.” The AAO’s Notice of Intent to Dismiss the appeal (NOID) and Request for Evidence notified the petitioner that the record does not support recognition of the beneficiary’s [redacted] certificates as “an official college or university record” pursuant to the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C). The Indian Chartered Accountants Act of 1949, as amended in 2006, created the [redacted] to regulate the auditing and financial accounting profession in India. See [redacted] (accessed June 28, 2013). Although this Act allows the [redacted] to require training and an examination for membership purposes, the plain language of the Indian Act makes clear that the institute does not constitute a college or university authorized to award academic degrees. The Chartered Accountants Act states that “any University established by law ... may impart education on the subjects covered by the academic courses of the Institute,” and that “[t]he Universities ... shall, while awarding degrees, diplomas or certificates or bestowing any designations, ensure that the awards or designations do not resemble or are not identical to one awarded by the Institute.” *Id.*, at Section 15A. The plain language of the Indian Act therefore distinguishes the [redacted] from a university and bars Indian universities from issuing degrees or academic designations that are similar or identical to those of the institute.

In addition, the [redacted] does not recognize the [redacted] as a college or university. See [redacted] (accessed June 28, 2013). Nor is the [redacted] one of the ‘ [redacted] ’ in India that fall under the administrative control of the Department of Higher Education and can award degrees. See [redacted] (accessed June 28, 2013).

In response to the AAO’s NOID, counsel asserts that the AAO “provides no rationale” for not following the conclusions of the three education evaluators and the EDGE, which, according to counsel, all find that the beneficiary possesses the equivalent of a U.S. bachelor’s degree.

In determining the beneficiary’s educational qualifications for professional classification, the AAO does not ignore the conclusions of the three evaluators and the EDGE. The AAO carefully considered all of the conclusions and cites to the EDGE to support this decision. All of the evaluations conclude that the beneficiary has the equivalent of a U.S. bachelor’s degree in accounting; but how they arrive at this conclusion differs. The Act and the regulations indicate that a professional must possess a single degree that is either a U.S. bachelor’s degree or “a foreign equivalent degree.” See section 203(b)(3)(A)(ii) of the Act (“[p]rofessionals” are “[q]ualified immigrants who hold baccalaureate degrees”); 8 C.F.R. § 204.5(l)(3)(ii)(C) (the evidence must show that the beneficiary “holds a United States baccalaureate degree or a foreign equivalent degree”). Evidence of professional education qualifications must also “be in the form of an official college or university record.” 8 C.F.R. § 204.5(l)(3)(ii)(C).

[redacted] evaluation equates the beneficiary’s credentials to a U.S. bachelor’s degree based on a combination of her three-year bachelor’s degree and her [redacted] certificate and associate

membership. But, as indicated above, the Act and the regulations indicate that a professional must possess a single degree that is either a U.S. bachelor's degree or a foreign equivalent degree, not a combination of academic achievements. The other evaluations conflict with [REDACTED] evaluation by finding that the beneficiary's [REDACTED] certificates, by themselves, equal a U.S. bachelor's degree. But, as indicated above, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires evidence of professional educational qualifications "in the form of an official college or university record." As discussed previously, the [REDACTED] is not a college or university under Indian law. Its certificates therefore do not constitute an official college or university record. For these reasons, the three evaluations and the EDGE do not establish the beneficiary's educational qualifications for professional classification.

Counsel also argues that the AAO incorrectly focuses on the "half" of the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) that requires evidence of professional educational qualifications in the form of an official college or university record. Counsel asserts that proper consideration of the "full" regulation shows that the beneficiary has the equivalent of a U.S. bachelor's degree, as the regulation requires. Counsel further argues that:

[t]he beneficiary's degree from the [REDACTED], however, is [from] a College that the University Grant Commission does recognize. As such, by the AAO's admission, USCIS should accept the beneficiary's degree from [the] [REDACTED] [REDACTED] as the equivalent of a U.S. bachelors degree. The [REDACTED] certificate, which can only be obtained by individuals who already possess a bachelors degree, is referred to in the expert opinion letters and in counsel's appeal brief in order to emphasize the fact that the beneficiary clearly attained the equivalent of a U.S. bachelors degree because she could not have attained the [REDACTED] certificate without completion of these studies.

The first "half" of the regulation states that the evidence must show that the beneficiary "holds a United States baccalaureate degree or a foreign equivalent degree." As discussed previously, the regulation is written in the singular, requiring "a United States baccalaureate *degree* or a foreign equivalent *degree*." 8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). The regulation's plain language therefore indicates that only a single degree that is either a U.S. baccalaureate degree or a foreign equivalent degree qualifies a beneficiary for professional classification.

The second "half" of the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), which requires evidence "in the form of an official college or university record," further limits the qualifications for professional classification to a single degree that is either a U.S. baccalaureate degree or a foreign equivalent degree *from a college or university*. Principles of statutory construction also support the AAO's conclusion that Congress intended section 203(b)(3)(A)(ii) of the Act to require professionals to hold baccalaureate degrees from colleges or universities. As previously discussed, Congress broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning" in section 203(b)(2)(C) of the Act regarding aliens of exceptional ability. Congress' use of different language in the same Act indicates that,

unlike classification as an alien of exceptional ability, professional classification requires a bachelor's degree from a college or university.

As discussed above, both the EDGE and the petitioner's only evaluation that discusses the beneficiary's Bachelor of Commerce degree found her degree to be equivalent to three years of study and not a foreign equivalent degree of a U.S. bachelor's degree. The petitioner has provided no evidence to explain or overcome the inconsistencies among the evaluations, or to document that the beneficiary's Bachelor of Commerce degree is a foreign equivalent degree of a U.S. bachelor's degree.

The petitioner has also failed to submit evidence to support counsel's assertion that U.S. universities consider three-year Indian bachelor's degrees to equal four-year U.S. bachelor's degrees. 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); see also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998), citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972) (going on record without supporting documentary evidence is insufficient to meet the burden of proof in these proceedings).

Finally, counsel compares Indian Chartered Accountants (CAs) to U.S. Certified Public Accountants (CPAs), asserting that both CAs and CPAs require bachelor's degrees before obtaining U.S. licenses or Indian certificates to practice. She therefore argues that the AAO should consider the beneficiary's educational credentials to equal those of a CPA.

The petitioner has failed to submit any evidence to support counsel's assertion that both CAs and CPAs require bachelor's degrees to practice. See *Matter of Obaigbena*, 19 I&N Dec. at 534; *Matter of Ramirez-Sanchez*, 17 I&N Dec. at 506 (the assertions of counsel do not constitute evidence). According to an article in the *American Journal of Business Education*, U.S. CPAs must obtain at least 150 credit hours (typically five years) of undergraduate course work, pass four parts of a CPA exam, and, in many states, work for at least one year in public accounting. See Alka Arora, "Training Requirements of Entry Level Accountants: CA (India) vs. CPA (U.S.)," *American Journal of Business Education*, March/April 2012, Vol. 5, No. 2, at <http://journals.cluteonline.com/index.php/AJBE/article/view/6822/6897> (accessed June 27, 2013). The article states that Indian CAs, however, are not required to obtain bachelor's degrees. *Id.*, at p. 201. According to the article, CAs in India must only obtain three years of work experience and pass three levels of exams. *Id.*, at p. 204. The record therefore does not establish that the beneficiary's educational credentials are comparable to those of a U.S. CPA.

After reviewing all of the evidence in the record, the AAO concludes that the petitioner has failed to establish that the beneficiary possesses a single degree from a college or university that is either a U.S. baccalaureate degree or a foreign equivalent degree. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

### **The Beneficiary Must Meet the Minimum Requirements of the Offered Position**

In addition to qualifying for professional classification, the beneficiary, by the petition's priority date, must meet all of the minimum requirements of the offered position as 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 of a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" to determine whether the beneficiary meets the minimum 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 ETA Form 9089 states the following minimum requirements for the offered position of audit manager:

- H.4. Education: Bachelor's in accounting, finance or business.
- H.5. Training: None required.
- H.6. Experience in the job offered: 60 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements:

Employer will accept any suitable combination of education, experience and skills.

Experience in auditing at a public accounting firm and/or large public company internal audit department. Experience to include a minimum of 3 years experience at a [redacted] accounting firm; audits of ERP systems, particularly SAP and Oracle; auditing of outsourced offshore operations and project assurance activities for organization wide initiatives. 3 years knowledge required in the application of IFRS and USGAAP. Professional designation required (CPA, CA, MIIA, CIA, CISA, CMA, CFE, CISSP or CIPP).

As previously discussed, the beneficiary possesses a Bachelor of Commerce degree from the [REDACTED] India, and an [REDACTED] certificate and associate membership. The EDGE and all of the petitioner's proffered credentials evaluations equate the combination of the beneficiary's degree and her [REDACTED] credentials to a U.S. bachelor's degree.

Parts H.4, H.8 and H.9 of the ETA Form 9089 do not appear to permit a combination of academic achievements, like the beneficiary possesses, to meet the minimum education requirements of the offered position.<sup>5</sup> Parts H.4 and H.9 of the labor certification require a bachelor's degree or a foreign equivalent degree in accounting, finance or business. Part H.8 of the labor certification specifically states that the petitioner will not accept an alternate combination of education and experience.

Part H.14 of the ETA Form 9089, however, indicates that the "[e]mployer will accept any suitable combination of education, experience and skills."<sup>6</sup> As indicated previously, however, the DOL has advised that "[w]hen an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the [labor certification] as well as throughout all phases of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." See Memo. from Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994).

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<sup>5</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 Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't. of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree," 2 (June 13, 1994); the DOL's certification of job requirements stating that "a certain amount and kind of experience is the equivalent of a college degree does in no way bind [USCIS] to accept the employer's definition." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993); "When the term equivalent is used in conjunction with a degree, we understand that to mean the employer is willing to accept an equivalent foreign degree." See Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). To the AAO's knowledge, these field guidance memoranda have not been rescinded.

<sup>6</sup> This statement closely resembles the so-called "*Kellogg* language," which the DOL requires on labor certifications when the petitioner employs the beneficiary and the beneficiary qualifies for the offered position only on the basis of "alternative requirements." See *Matter of Francis Kellogg*, 94-INA-465 (BALCA Feb. 8, 1998) (*en banc*); 20 C.F.R. § 656.17(h)(4)(ii) (codifying *Kellogg*'s holding). The *Kellogg* language must state that "any suitable combination of education, training, or experience is acceptable." *Id.* In the instant case, the petitioner employs the beneficiary. But the labor certification does not contain any alternate requirements for the offered position.

The instant petitioner's statement that it will accept "any suitable combination of education, experience and skills" does not "specifically" indicate alternate educational requirements for the offered position pursuant to the DOL's guidance. Rather, the statement indicates only that "suitable" combinations of education, experience and skills are acceptable. It is also noted that, if the labor certification did not require at least a four-year U.S. bachelor's degree or a foreign equivalent degree, the petition could not be approved. *See* 8 C.F.R. § 204.5(1)(3)(i) (the labor certification accompanying a petition must require at least a bachelor's degree or a foreign equivalent degree.)

Thus, the record does not establish that the combination of the beneficiary's degree and her certificates meets the minimum educational requirements stated on the labor certification. The AAO therefore concludes that the petitioner has failed to establish that the beneficiary met the requirements of the offered position as set forth on the labor certification by the petition's priority date.<sup>7</sup>

In summary, the petitioner has failed to establish that the beneficiary, by the petition's priority date, possessed a single degree from a college or university that is either a U.S. bachelor's degree or a foreign equivalent degree, as required for professional qualification. The petitioner has also 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. For both reasons, the petition is not approvable.

The petition will be denied for the above stated reasons, with each considered an independent and alternate 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.

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<sup>7</sup> As indicated previously, the beneficiary must meet the requirements of both the offered position set forth on the labor certification and the regulations for professional classification. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N at 159; *Matter of Katigbak*, 14 I&N Dec. at 49.