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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: MAY 0 2 2013 OFFICE: NEBRASKA SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a software consultation and solutions company. It seeks to employ the beneficiary permanently in the United States as a computer programmer analyst. 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 (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is November 4, 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, timely, 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-
>
> > (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
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> (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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> . . .
>
> 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).
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> 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).[3] The AAO will first consider whether the petition may be approved in the professional classification.

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[3] 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 record of proceeding whether

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)(l), (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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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.

The required education, training, experience and skills for the offered position are set forth at Part H 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.4B. Major field of study: Computer Science.
H.5. Training: None required.
H.6. Experience in the job offered: 12 months.

H.7. Alternate field of study that is acceptable: Yes accepted.
H.7A Alternate field of study: Computer Information Systems.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10 Experience in an alternative occupation: Yes accepted.
H.10A Number of months required in alternate occupation: 12
H.10B Job title of the acceptable alternate occupation: Software Programmer or Software Engineer.
H.11 Job duties:

Analyze and develop specifications for the design in order to determine the feasibility, cost, time required, compatibility with current system, and computer capabilities. Prepare detailed specifications for writing, coding, debugging, and documenting programs; design new or modified databases for document printing systems and underwriting using EDGE Electonic Document Generating Enterprise, and AION 6.5; Analyze, review, and alter programs to increase operating efficiency or adapt to new requirements. Work on base and enhancement reports using Fire EDGE Interface, VDR process, VRF process, Documerge, AFP process, Provide technical assistance and training to new user. HARDWARE: IBM ESA-9000, IBM 3090, IBM PC AT/XT. OPERATING SYSTEMS: MVS.ESA, MVS/XA, MS-DOS, WINDOWS 95, Windows XP, OS/2, OS/2 WARP; LANGUAGES: VS-COBOL ii, MS-COBOL, JCL, VSAM, CICS; DATABASES: DB2, MS-ACCESS SOFTWARE & TOOLS: XPEDITER, INTEREST, SMARTTEST, VA-COBOL DEBUGGER, FILEAID, INSYNC, CA7, ASIM/INFO PRODUCTS, BETA PRODUCTS, DITTO, EASYTRIEVE, TMS LISTINGS, SPUFI, QMF, HIPERSTATION, ENDEVOR, STROBE, OMEGA MAN, TEST DIRECTOR, CHECK-IN CHECK-OUT, PANACALET, PIE, ISM, JCL CHECK, JEM, LOTUS NOTES, PLATINUM, SORT UTILITIES.

Part J of the labor certification states that the beneficiary possesses a bachelor's degree in Computer Information Systems from the [redacted] completed in 2005.

The record of proceeding contains a copy of the beneficiary's Bachelor of Engineering degree in the Mechanical Branch from the [redacted] completed on January 5, 2005. The petitioner provided the academic transcripts associated with this degree program. Also included in the record is a Diploma in Mechanical Engineering, with related transcrips, from the [redacted] awarded to the beneficiary after a three-year study period at the institution. Additionally, the petitioner submitted the beneficiary's high school certificate.

The record contains an evaluation of the beneficiary's credentials prepared by [redacted] an evaluator with [redacted] on November 2, 2009. [redacted] concludes

that the beneficiary's education, including 10 years of education through secondary school, three years at the where he was awarded a Diploma in Mechanical Engineering, and his Bachelor of Engineering (Mechanical Engineering) from the combined with his three months in-house computer training with and, his employment with as a Senior Computer Analyst from May 1, 2003 to January 10, 2007, and his employment as a Computer Programmer Analyst with from January 25, 2007 to July 29, 2007, is the US equivalent to a BS computer information systems degree.

The record also contains an evaluation of the beneficiary's credentials prepared by Ph.D., Professor and Associate Department Chair at the on Apil 9, 2010. notes that after completing high school in March 1999, the beneficiary completed a three-year Diploma in Mechanical Engineering from the and that the beneficiary passed the State Board of Technical Education and Training, Examination in April 1999; and, that in 2003 the beneficiary completed a four-year Bachelor of Engineering (Mechanical Engineering) degree from the also noted that the courses the beneficiary completed for his Diploma in Mechanical Engineering from the were "lower level diploma courses in mechanical engineering and not university level courses." also notes that the beneficiary received three months in-house computer training with and was employed with the company as a Senior Computer Analyst from May 1, 2003 to January 10, 2007; and, that the beneficiary worked as a Computer Programmer Analyst with from January 25, 2007 to July 29, 2007. concludes that based on the beneficiary's course work, his employment experience, and training in computer information systems, he has "attained the equivalent of a Bachelor's Degree in Computer Information Systems from an accredited institution of higher education in the United States."

Both evaluations conclude that the combination of the beneficiary's Bachelor of Science degree from the his diploma from the and his employment experience, and training in computer information systems, is equivalent to a bachelor of computer information systems degree. Both evaluations conclude that, based on a combination of this education with the beneficiary's work experience, the beneficiary has earned the equivalent of a bachelor's degree in computer information systems from an accredited college or university in the United States.

It is important to note that neither the petitioner nor the evaluator claims that the beneficiary has earned a Bachelor's degree or a foreign degree equivalent in Computer Science or Computer Information Systems. Rather, the petitioner claims that the combination of the beneficiary's education and work experience is equivalent to a U.S. bachelor's degree in Computer Information Systems.

The issue before us is whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

The regulations specifically require the submission of such evidence for this classification. 8 C.F.R. § 204.5(l)(3)(B) ("the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification"). As noted above, the ETA Form 9089 in this matter is certified by DOL.

The key to determining the job qualifications is found on ETA Form 9089 Part H. The employer requires a bachelor's degree in computer science or computer information systems plus twelve months of experience in the job offered as the main minimum requirements. The employer's alternative requirements expressly indicates its intent to offer the proffered position as a professional, and not as a skilled worker and not to be considered under the skilled worker category.

On appeal, counsel contends that the director erred in not taking into consideration the reports which evaluates the beneficiary's education and experience as equivalent to a U.S. bachelor's degree in computer information systems, and in finding that the petitioner has not demonstrated that the beneficiary met the minimum requirement of the ETA 9089. Counsel asserts that the evaluations show that the beneficiary meets the minimum requirements of the labor certification because he has earned the equivalent of a bachelor's degree in computer information systems through a combination of education and work experience.

Contrary to counsel's contention, the petitioner has not demonstrated that the beneficiary met the minimum requirement of the ETA 9089. The evaluations do not establish that the beneficiary met the minimum requirement of the ETA 9089 as he has not earned a bachelor's degree in computer science or computer information systems.

The evaluations state that the beneficiary obtained a Bachelor of Engineering (Mechanical Engineering) degree, and has, as a result of progressively more responsible employment experiences, an educational background equivalent to that of an individual with a bachelor's degeee in computer information systems from an accredited university in the United States. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm'r 1988); *Matter of Sea, Inc.,* 19 I&N Dec. 817 (Comm'r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The evaluations in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*). The beneficiary was required to have a bachelor's degree, in computer science or computer information systems, on the Form ETA 9089. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 9089 was

certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

The occupational classification of the offered position is not one of the occupations statutorily defined as a profession at section 101(a)(32) of the Act, which states: "The term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

The certification of the ETA 9089 indicates that the DOL assigned the occupational code of 15-1031.00 and Computer Softaware Engineers, to the proffered position. The DOL's occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the applicable occupational classification code is noted on the labor certification form. O*NET is the current occupational classification system used by the DOL. Located online at http://online.onetcenter.org, O*NET is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations." O*NET incorporates the Standard Occupational Classification (SOC) system, which is designed to cover all occupations in the United States.[4]

In the instant case, the DOL categorized the offered position under the SOC code 15-1031.[5] The O*NET online database states that this occupation falls within Job Zone Four.[6]

According to the DOL, two to four years of work-related skill, knowledge, or experience are needed for Job Zone 4 occupations. The DOL assigns a standard vocational preparation (SVP) of 7 to Job Zone 4 occupations, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See http://online.onetcenter.org/link/summary/13-1111.00* (accessed February 14, 2011). Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

> A considerable amount of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

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[4] *See* http://www.bls.gov/soc/socguide.htm.

[5] According to O*NET, this occupation code is no longer in use, instead SOC code 15-1132.00 must be used. www.onetcodeconnector.org/find/result?s=15-1031.00 (accessed April 11, 2013).

[6] According to O*NET, most of the occupations in Job Zone Four require a four-year bachelor's degree. http://online.onetcenter.org/help/online/zones (accessed February 14, 2011).

See id. Because of the requirements of the proffered position and the DOL's standard occupational requirements, the proffered position may be considered under either the professional or the skilled worker category. In this matter, counsel argues that the position should be considered as requiring a combination of education and work-related experience which equates to the equivalent of a bachelor's degree in computer information systems.

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

> 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. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

Because the petition's proffered position qualifies for consideration under both the professional and skilled worker categories, the AAO will apply the regulatory requirements from both provisions to the facts of the case at hand, beginning with the professional category.

i. Neither the Position nor the Beneficiary May be Qualified as a Member of the Professions Pursuant to Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii)

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and 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. 1289m 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement in of a "degree" for members of the professions is deliberate. Significantly, 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) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate degree, we would not consider education earned at an institution other than a college or university.

The petitioner in this matter relies on the beneficiary's combined education and work experience to reach the "equivalent" of a degree, which is not a bachelor's degree based on a single degree in the required field listed on the certified labor certification.

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act.

ii. The Position May be Properly Classified as One Requiring a Skilled Worker Pursuant Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i)

As noted above, based on the terms of the certified Form ETA 9089, the proffered position requires a bachelor's degree. In addition, the worker must have earned a bachelor's degree in computer science or in computer information systems or must be deemed to have earned the equivalent of a bachelor's degree based on any suitable combination of education, experience, or training. Moreover, the position requires 12 months of experience in the job offered or in the related occupations of software programmer or software engineer.

The regulation at 8 C.F.R. § 204(5)(l)(3)(ii)(B) states the following:

> 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 individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional 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 application form]." *Id.* at 834 (emphasis added). 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). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Further, the employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the proffered position. *Maramjaya v. USCIS,* Civ. Act. No. 06-2158 (RCL) (D.C. Cir. Mar. 26, 2008), 14 n. 7. Thus, USCIS agrees that the best evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered 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 is needed to ensure inflation of those requirements is not occurring in an effort to fit the beneficiary's credentials into requirements that do not seem on their face to include what the beneficiary has.

It is concluded that the position may be classified as one requiring a skilled worker because it requires at least two years of training or experience, i.e., either a bachelor's degree in computer science or computer information systems or the equivalent of a bachelor's degree based on a suitable combination of education, experience, or training, and 12 months of experience as a software programmer or software engineer. However, the petitioner does not specify what is to be considered as a "suitable combination of education, experience, or training" to used in ascertaining whether a candidate has earned the "equivalent" of a bachelor's degree in computer information systems through a combination of education and experience. What comprises a "suitable combination of education, experience, or training" is not clear, and neither USCIS nor prospective applicants for the position could realistically be expected to guess what methodology the petitioner intended to use to evaluate candidates claiming to have earned the "equivalent" to a U.S. bachelor's

degree. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Regardless, assuming *arguendo* that the petitioner intended to apply the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D), as discussed above, the evaluations are still not persuasive in establishing that the beneficiary has earned the equivalent of a U.S. bachelor's degree in computer science or computer information systems.

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.