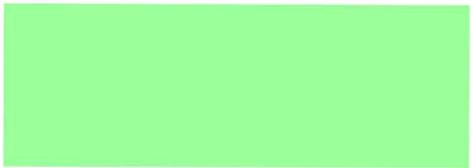


(b)(6)

U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090

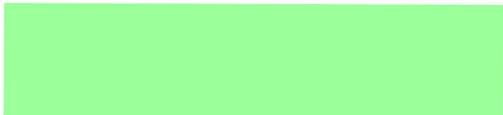
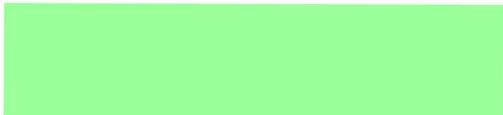


U.S. Citizenship  
and Immigration  
Services



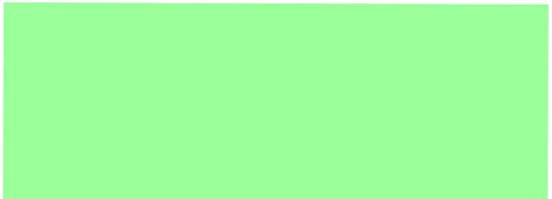
DATE: **MAY 21 2013**

OFFICE: TEXAS SERVICE CENTER FILE: 

IN RE: Petitioner:   
Beneficiary: 

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

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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 health care service firm. It seeks to employ the beneficiary permanently in the United States as a Lawson Systems Administrator. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.<sup>1</sup> Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

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>2</sup>

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on June 3, 2011.<sup>3</sup> The Immigrant Petition for Alien Worker (Form I-140) was filed on August 23, 2011.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and

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<sup>1</sup> On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

<sup>2</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).

<sup>3</sup> If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, provide:

***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

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; Computer Science or Related Field.
- H.5. Training: None required.
- H.6. Experience in the job offered: 24 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: Bachelors degree in computer science or related field required. Minimum 2 years Lawson system administration experience including Process Flow, Manager and Employee Self Service, LBI, and MS Add-ins. Development and maintenance of customizations in various Lawson products and 4GL; IBM WebSphere Administrator; Lawson Business Intelligence Administration; Microsoft LDAP (ADAM); Microsoft IIS or IBM HTTP Server; BSI Tax Factory; CASE Tools; Lawson Design Studio 9.0; JavaScript; XML, HTML, JAVA and Perl.

Part J of the labor certification states that the beneficiary's highest level of education related to the offered position is a Bachelor's in Computer Science from the [REDACTED] India, completed in 2000.

The record of proceeding contains a copy of the beneficiary's and transcripts from the [REDACTED] [REDACTED] indicating that he received a degree of Bachelor of Science in Computer Science in April 2000. The transcripts reflect that this was a three-year course of academic study.

To determine whether a beneficiary is eligible for a preference immigrant visa, U.S. Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor

may it impose additional requirements. *See Madany*, 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).

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.

On March 19, 2013, the AAO issued a request for evidence to the petitioner. In this request, the AAO noted that the record of proceeding indicated that the beneficiary's transcripts and diploma reflected that the beneficiary completed a three-year course of study at the [REDACTED]. The AAO further advised that according to the American Association of Collegiate Registrars and Admissions Officer's (AACRAO) EDGE database, an Indian Bachelor Arts, Bachelor of Commerce or a Bachelor of Science is equivalent to three years of undergraduate study in the United States and that neither the labor certification application, as certified, or the professional category selected would allow the petitioner to accept a combination of degrees that are individually less than a single-source U.S. bachelor's degree or its foreign equivalent and/or a quantifiable amount of work experience when the labor market test was conducted. The AAO additionally requested the petitioner's 2011 and 2012 tax returns to establish the petitioner's continuing ability to pay the proffered wage.

In response to the Request for Evidence, counsel submits sufficient documentation that establishes that the petitioner has the ability to pay the proffered wage based on its payment of wages in excess of the proffered wage to the beneficiary and evidence that demonstrates that the beneficiary acquired the requisite two years of work experience in Lawson System Administration. With regard to the beneficiary's academic education, counsel emphasizes the conclusions of the [REDACTED] evaluations, which assert that the beneficiary's degree is, standing alone, the U.S. baccalaureate equivalent degree.

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

In general.-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 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 left to USCIS to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. 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>4</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).<sup>5</sup>

<sup>4</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

<sup>5</sup> The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

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 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).

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. More specifically, a three-year bachelor's degree will not be considered to be the “foreign equivalent degree” to a United States 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.

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 30, 2006). In that case, the labor certification application 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. *Id.* at \*11-13. Additionally, the court determined that the word ‘equivalent’ in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Id.* at \*14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a

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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 (9<sup>th</sup> Cir. 1984).

baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at \*17, 19. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the ETA Form 9089 and does not include alternatives to a four-year bachelor's degree. 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 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this matter, the ETA Form 9089 does not specify an equivalency to the requirement of a Bachelor of Computer Science or related field degree. Further, as the petitioner selected "professional" on Form I-140, the petitioner must establish that the labor certification requires a bachelor's degree and that the beneficiary has a bachelor's degree. The petitioner cannot rely on any equivalent formula to a Bachelor's degree for the professional classification.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Madany*, 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 professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *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 cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Moreover, for classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) 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." (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 1289, 1295 (5<sup>th</sup> Cir. 1987). It can be presumed that Congress' narrow requirement 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 member of the profession 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, we could not consider education earned at an institution other than a college or university.

Moreover, as advised in the request for evidence issued to the petitioner by this office, 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, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php>. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials.<sup>6</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.* While EDGE is a commercial database, USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>7</sup>

EDGE’s credential advice provides that a (3 year) Bachelor’s degree is comparable to “3 years of university study in the United States. Credit may be awarded on a course-by-course basis.”

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<sup>6</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>7</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.

As noted in the AAO's RFE, the petitioner submitted a credentials evaluation from [REDACTED] dated April 14, 2009, authored by [REDACTED] states that "[t]he studies undertaken, the number of credit units earned, the number of years of coursework, and the degree earned all indicate that [the beneficiary] satisfied requirements equivalent to those required toward the completion of three years of academic coursework from an accredited institution of higher education in the United States." [REDACTED] then combines the beneficiary's professional employment experience, of "more than eight years" from October 2000 to April 2009, with his academic studies and concludes that this combination, using a formula of three years of work experience equating to one year of college, is the U.S. equivalent of at least a Bachelor of Science in Computer Information Systems. It is noted that this evaluation used the rule to equate 3 years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). As indicated above, when the regulation at 8 C.F.R. § 204.5 was first adopted, there was no provision to consider experience in lieu of formal education. Further, it is noted that the evaluator does not designate specifically what years he relies on to reach the combination of an equivalent bachelor degree based on education and experience. The petitioner may not rely on the same experience to show that the beneficiary meets the required two years of experience. Additionally, as the petitioner filed the Form I-140 petition as a professional only, the petitioner must establish that the labor certification requires, and that the beneficiary has a baccalaureate degree and may not rely on an equivalent based on a combination of education and experience.

The petitioner also submitted evaluations from [REDACTED],<sup>8</sup> President of [REDACTED] and the [REDACTED] and [REDACTED] of [REDACTED]

<sup>8</sup> The [REDACTED] was founded by [REDACTED] who initially formed it as the [REDACTED] which became [REDACTED] which became [REDACTED] before being adopted as the [REDACTED] acknowledged that the [REDACTED] degrees would not be accepted in the United States and asserted that they may appeal to "those whose pursuit of a degree is purely for interest or to validate what they have achieved for personal satisfaction." (According to [REDACTED] (originally accessed on November 5, 2009, but this specific web address is not currently operational). Current information available on its website at [REDACTED] (accessed September 14, 2010, but not currently operational) indicates that this entity operates chiefly through the internet with the adjunct faculty and administration located in various countries with degrees conferred as may be permitted in different jurisdictions where permitted by law. It further states that the [REDACTED] has certificates of incorporation and good standing from the "Commonwealth of Dominica" but does not offer educational activities within Dominica itself. It does not operate or is accredited by any federal or state government in the U.S. It is also not accredited by a United Kingdom Royal Charter or Act of Parliament and does not issue United Kingdom degrees. *Id.* Like [REDACTED] has claimed in other cases that he has a doctorate from the [REDACTED] Costa Rica. (See the following footnote.)

<sup>9</sup> [REDACTED] states that she is a member of the [REDACTED], the [REDACTED] and the [REDACTED]

Both evaluations reference each other and supply additional supplementary materials. Both assert that the beneficiary's three-year Indian Bachelor of Science in Computer Science, is, standing alone, is the U.S. equivalent of a four-year Bachelor of Science in Computer Science.

emphasizes that the beneficiary's "contact" hours within his degree course of study were similar in complexity and length to a course of study to a U.S. bachelor's degree. The and evaluations present similar arguments. It is noted that both are affiliated with each other and with the . According to the "university's" website, (accessed May 15, 2013), it awards degrees based on experience.

The record does not indicate what these organizations require for membership, and their websites do not indicate that anything other than the payment of dues for membership is required. For example, the bylaws for the AEA at <http://www.eval.org/about/us/bylaws.asp>, states: "Any individual interested in the purposes of the Association shall be eligible for membership. Members are defined as those who have completed an application form, received acknowledgment of membership from the Association, and paid the currently stipulated membership dues." Membership in organizations that only require the payment of dues does not confer any expertise. indicates that she is a professor at the which appears to be connected to and has a Master's degree from the has previously indicated that she has a doctorate from but has not indicated the field in which she obtained her doctorate. According to its website, awards degrees based on past experience. In other cases, has omitted her doctorate from the and states that she has a doctorate from the Costa Rica and is currently a professor at that institution. We note that the current website of fails to mention that it offers doctorates and only lists bachelor's and master's programs.

In 2004, acknowledged having financial ties to a diploma mill selling fake degrees online and run out of the state of Washington by two individuals that were subsequently convicted. The U.S. government shut the operation down in 2005. The operation was based in Liberia, but appeared to be run in the United States. In May 2004, reversed her position and indicated that she would no longer rate the degrees as equivalent to U.S. degrees, but was criticized by "others in the credential evaluation field" who said that "those ties constituted a breach of professionalism and a conflict of interest."

also discusses Carnegie Units and Indian degrees in general, concluding that the beneficiary's three-year degree is equivalent to a four-year U.S. baccalaureate and assigns various numerical credits for individual courses. These credits are not shown on the beneficiary's transcripts. Ultimately, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees.

Further, the evaluation from references excerpts from the United Nations Educational Scientific and Cultural Organization (UNESCO) regarding recognition of foreign educational qualifications. These items do not establish that the beneficiary's degree is equivalent to a U.S. bachelor's degree. UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention on the recognition of qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same agreement. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. It is noted that the United States was not a member of UNESCO between 1984 and 2002. Moreover the Recommendation on the Recognition of Studies and Qualifications in Higher Education does not compel the United States to recognize the beneficiary's three-year degree as a foreign equivalent to a U. S. baccalaureate. The 1979 Convention (to which the United States was a signatory), for example, provided provisions related to "recognition" of qualifications awarded in higher education. Article I defines recognition as follows:

- (a) Recognition of a certificate, diploma or degree with a view to undertaking or pursuing studies at the higher level shall enable the holder to be considered for entry to the higher educational and research institutions of any Contracting State as if he were the holder of a comparable certificate, diploma or degree issued in the Contracting State concerned. Such recognition does not exempt the holder of the foreign certificate, diploma or degree from complying with the conditions (other than those relating to the holding of a diploma) which may be required for admission to the higher educational research institution concerned of the receiving State.
- (b) Recognition of a foreign certificate, diploma or degree with a view to the practice of a profession is recognition of the professional preparation of the holder for the practice of the profession concerned, without prejudice, however, to the legal and professional rules or procedures in force in the Contracting States concerned. Such recognition does not exempt the holder of the foreign certificate, diploma or degree from complying with any other

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<sup>10</sup> also cites a Specifically, asserts that this article concludes that because the United States is willing to consider three-year degrees from Israel and the European Union, "Indian bachelor degree-holders should be provided the same opportunity to pursue graduate education in the U.S." While this is the conclusion of the article, the specific means by which Indian bachelor degree holders might pursue graduate education in the United States provided in the discussion portion of the article in no way suggests that Indian three-year degrees are, in general, comparable to a U.S. baccalaureate.

conditions for the practice of the profession concerned which may be laid down by the competent governmental or professional authorities.

These UNESCO recommendations relate to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, these recommendations do not define "comparable qualification." At the heart of this matter is whether the beneficiary's three-year degree is, in fact, the foreign equivalent of a four-year U.S. baccalaureate. The UNESCO recommendation does not address this issue.

breaks down the beneficiary's subjects into courses and awards credits for each course, concluding that the beneficiary achieved 160 "contact hours using the Carnegie Unit." The evaluations base this equivalency formula on the claim that the U.S. semester credit hour is a variant of the "Carnegie Unit." The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject. For example, 120 hours of classroom time was determined to be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school.<sup>11</sup> This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class.<sup>12</sup> Although disputed by <sup>3</sup> according to the foundation's website, the "Carnegie Unit" relates to the number of classroom hours a high school student should have with a teacher, and "does not apply to higher education."<sup>14</sup>

does not explain how she determined the individual course credit numbers, which are all "6s" and "8s." As noted above, specifically, the beneficiary's transcript does not provide any information as to classroom hours or credits.

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<sup>11</sup><http://www.carnegiefoundation.org/about/sub.asp?key=17&subkey=1874> (accessed May 9, 2013).

<sup>12</sup>*Id.*

<sup>13</sup> The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at [http://handouts.aacrao.org/am07/finished/F0345p\\_M\\_Donahue.pdf](http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf), and incorporated into the record of proceedings, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

<sup>14</sup>*Id.*

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

The petitioner's evaluations from both [REDACTED] conflict with the petitioner's evaluation from [REDACTED] which finds that the beneficiary's bachelor's degree is only equal to three years of study similar to EDGE's conclusions. This discrepancy has not been resolved. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Based on the foregoing, the AAO cannot conclude that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree. The petitioner also failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification. Therefore, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) 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.