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

U.S. Citizenship and Immigration Services

(b)(6)

DATE: OCT 10 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)(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 (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at http://www.uscis.gov/forms for the latest information on fee, filing location, and other requirements.** *See also* 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as an information technology/engineering services company. It seeks to permanently employ the beneficiary in the United States as a system analyst. The petitioner requests 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).

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 14, 2007. *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.

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

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[1]

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

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

[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).

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

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

> There is no doubt that the authority to make preference classification decisions rests with INS. The language of section 204 cannot be read otherwise. *See Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C. Cir. 1977). In turn, DOL has the authority to make the two determinations listed in section 212(a)(14).[2] *Id.* at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> . . .
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

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

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

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:

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[2] Based on revisions to the Act, the current citation is section 212(a)(5)(A).

> 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. 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)

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 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 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).

At issue in this case is whether the beneficiary possesses a U.S. bachelor's degree or a foreign equivalent degree, and whether the beneficiary meets the requirements of the labor certification.

The Beneficiary Must Possess a U.S. Bachelor's Degree or Foreign Equivalent Degree

As is noted above, in order to be classified as a professional, the beneficiary must 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) 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 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).

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

It is significant that both section 203(b)(3)(A)(ii) of the Act and the relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' requirement of a single "degree" for members of the professions is deliberate.

The regulation also requires the submission of "an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study." 8 C.F.R. § 204.5(l)(3)(ii)(C) (emphasis added). In another context, Congress has broadly referenced "the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning." Section 203(b)(2)(C) of the Act (relating to aliens of exceptional ability). However, for the professional category, it is clear that the degree must be from a college or university.

In *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006), the court held that, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, USCIS properly concluded that a single foreign degree or its equivalent is required. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (for professional classification, USCIS regulations require the beneficiary to possess a single four-year U.S. bachelor's degree or foreign equivalent degree).

Thus, the plain meaning of the Act and the regulations is that the beneficiary of a petition for a professional must possess a degree from a college or university that is at least a U.S. baccalaureate degree or a foreign equivalent degree.

In the instant case, the labor certification states that the beneficiary possesses a Bachelor's of Science Degree from , India.

The record contains a copy of the beneficiary's Bachelor of Science diploma and transcripts from India, issued in 1990. In addition, the record further contains: a "PGDCA" certificate and transcript from India in 1995; a Diploma in Hardware and Networking from India received in 2000; a Professional Diploma and transcript from the , India in 2001; a Quality Management Program Certificate from India which is undated; and a Certificate of Achievement from India which is also undated. The petitioner, in its response to the NOID asked that the credential evaluations submitted from dated on July 12, 2011 and from dated July 9, 2011, as well as all other certificates except the beneficiary's Bachelor of Science Degree from India, be withdrawn from consideration in the instant appeal.

The record also contains an evaluation of the beneficiary's educational credential prepared by on June 20, 2013. The evaluation states that "it is the judgment of that the beneficiary has attained the equivalent to a Bachelor of Science Degree with a concentration in Computer Science." The evaluator does not offer any specific substantive description of how she arrived at her assessment of the beneficiary's credential as equivalent to a Bachelor of Science Degree with a concentration in Computer Science, when upon a review of the beneficiary's transcript there was no indication of any computer courses taken in his course of study.

As indicated the petitioner previously submitted another evaluation of the beneficiary's credentials prepared by Ms. on July 12, 2011, which was found to be insufficient to demonstrate the conclusion that the beneficiary possesses the foreign equivalent to a U.S. bachelor's degree. The petitioner was given notification of this issue by the AAO in a notice of intent to dismiss (NOID) dated May 29, 2013. However, the petitioner in its response to the NOID asked to withdraw the 2011 CCI evaluation from further consideration in its appeal. The petitioner submitted a new evaluation from the same source, and the June 19, 2013 evaluation will be viewed as an opportunity for the petitioner to meet the concerns the AAO discussed in the NOID.[3] In the 2013 evaluation, the evaluator indicates that the beneficiary's three-year bachelor's degree along with five years of employment experience is equivalent to a Master of Science Degree in Computer Science, but failed to discuss the formula used to arrive at this conclusion.

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[3] On page 2 of the petitioner's/counsel's response there is a request to "withdraw" this evaluation because "it did not adequately address the beneficiary's education." However, on page 4, counsel asserts "the documentation provided were [sic] evidence backed opinions."

The evaluator further indicates that the beneficiary took courses only in English, Telugu, Zoology and Chemistry. The evaluation states that the beneficiary "was awarded a Bachelor of Science Degree Part II Botany, Zoology and Chemistry." The evaluator states that the beneficiary earned the equivalent of 140 credit hours with a GPA of 2.9. The AAO notes that the course listing provided is the same as the listing in the evaluator's 2011 evaluation however, without explanation as to the difference, the evaluator concluded in 2011 that the beneficiary earned the equivalent of 120 credit hours and a GPA of 2.64. Both evaluations cite a formula based on the "Carnegie Unit" to come to these conclusions, however, the 2013 evaluation does not discuss how this formula generated a different result in 2013 than it did in 2011, based on the same degree and list of courses. Further, the 2013 evaluation states that the beneficiary's "education plus 5 years work experience" is equivalent to a U.S. Master of Science Degree in Computer Science. However, the evaluator states that the only credential reviewed was the "Bachelor of Science Degree, Part II Botany, Zoology, and Chemistry." Further, the 23 page evaluation at no point discusses any of the beneficiary's experience, despite the conclusion provided on page 1. Therefore, the evaluation appears to be conclusory and not based on a review of or supported by the evidence to establish that the beneficiary's Bachelor of Science Degree in, Part II: Botany, Zoology, Chemistry equates to a U.S. bachelor's degree in Computer Science. Moreover, according to the transcript of courses submitted into the record for the beneficiary from [redacted] there is no indication that any computer courses were taken during his course of study at that institution.

In addition, the evaluator also concluded that the beneficiary holds a three-year bachelor's degree which is insufficient for qualification under professional employment immigrant visa petition category. *See, Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006).

Accordingly, we do not find the determination of the credential evaluation conducted by CCI to be probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm'r 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Id.* at 245.

The response to the NOID also contained an evaluation prepared by Mr. [redacted] for [redacted] dated, June 20, 2013. The petitioner as previously indicated also requested that the prior evaluation prepared by the same source and dated, July 9, 2011 be withdrawn from consideration. The AAO will also consider, the June 19, 2013 evaluation as an opportunity for the petitioner to meet the concerns the AAO discussed in the NOID.[4] In his evaluation Mr. [redacted] concludes that the beneficiary's

[4] On page two of the petitioner's/counsel's response there is a request to "withdraw" this evaluation because "it did not adequately address the beneficiary's education." However, on page 4, counsel asserts "the documentation provided were [*sic*] evidence backed opinions." Counsel also indicates on page four that USCIS failed to address all of the evidence presented and the only way to dismiss the opinions of the evaluators would be to disprove the evidence presented.

postsecondary studies include a three-year program with "durational comparability" to a U.S. Bachelor of Science degree, representing 141 semester credit hours. The evaluator further states: "The equivalency provided by is based on informed opinion as an expert in the field of international credentials."

Mr. also did not indicate that the beneficiary's other education credentials were considered in his second evaluation, and offered no explanation for their omission. The evaluator indicates in both his 2011 and 2013 evaluations that the beneficiary's Bachelor of Science Degree is the only credential utilized in his determinations for both reports.

However, as with the evaluations from Ms. Mr. s evaluations also offer inconsistent information while utilizing the same data in both of his determinations.[5] Mr. indicates in his second evaluation, prepared on June 18, 2013, that the beneficiary's 2,120 contact, or class hours equate to 141 U.S. semester credit hours. The evaluator indicates that this 2013 determination is based on a letter from the beneficiary's university and a "Federal formula" also referred to as the "Carnegie Unit." Nonetheless, in his 2011 evaluation the evaluator indicates he uses the same Carnegie Unit measurement of these contact hours to offer an opinion that the beneficiary's contact hours during his pursuit of a Bachelor of Science degree from is equal to 120 credit hours when converted to a U.S. system. The evaluator offered no explanation for the inconsistent findings in his two evaluations although also indicating that he utilized the same information and method for evaluating the beneficiary's educational credential.

Mr. further concludes that the beneficiary's three-year bachelor's degree has "durational comparability" with a U.S. bachelor's by finding "the Indian bachelor's program contains as many if not more contact hours during it three-years than the U.S. bachelor's does in its four." Mr. further speculates that the admission requirements for a master's program in computer science, which might admit students with bachelor's degrees in other disciplines, justify the conclusion that the beneficiary's Bachelor of Science Degree with Part II: Botany, Zoology, Chemistry is equivalent to a degree in computer science. It must again be noted that that according to the beneficiary's transcript from no computer science based courses were part of the curriculum.

Mr. s reliance on *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Ore. Nov. 30, 2006) is equally misplaced. In that case, the alien not only had a credential beyond a three-year degree, the judge determined that even with that extra credential, the alien was only eligible as a skilled worker pursuant to section 203(b)(3) of the Act, and not as either a professional or an advanced degree professional pursuant to section 203(b)(2) of the Act. *Id.*

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[5] On page two of the petitioner's response, counsel on behalf of the petitioner requests that the AAO "withdraw" the first evaluation "because it did not adequately address the beneficiary's education." However, in page four, counsel asserts "the documentation provided were [*sic*] evidence backed opinions."

Mr. also relies on an article he coauthored with Ms. The record contains no evidence that this article was published in a peer-reviewed publication or anywhere other than the Internet. The article includes British colleges that accept three-year degrees for admission to graduate school but concedes that "a number of other universities" would not accept three-year degrees for admission to graduate school. Similarly, the article lists some U.S. universities that accept three-year degrees for admission to graduate school but acknowledges that others do not. In fact, the article concedes:

> None of the members of N.A.C.E.S. who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so.
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> In this process, we encountered a number of the objections to equivalency that have already been discussed.
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> Ed.D., President of commented thus,
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> "Contrary to your statement, a degree from a three-year "Bologna Process" bachelor's degree program in Europe will NOT be accepted as a degree by the majority of universities in the United States. Similarly, the majority do not accept a bachelor's degree from a three-year program in India or any other country except England. England is a unique situation because of the specialized nature of Form VI."
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> * * *
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> raise similar objections to those raised by ECE.,
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> "The Indian educational system, along with that of Canada and some other countries, generally adopted the UK-pattern 3-year degree. But the UK retained the important preliminary A level examinations. These examinations are used for advanced standing credit in the UK; we follow their lead, and use those examinations to constitute the an [sic] additional year of undergraduate study. The combination of these two entities is equivalent to a 4-year US Bachelor's degree.
>
> The Indian educational system dropped that advanced standing year. You enter a 3-year Indian degree program directly from Year 12 of your education. In the US, there are no degree programs entered from a stage lower than Year 12, and there are no 3-year degree programs. Without the additional advanced standing year, there's no equivalency.

Finally, these materials do not examine whether those few U.S. institutions that may accept a three-year degree for graduate admission do so on the condition that the holder of a three-year degree complete extra credits.

Mr. s 2013 evaluation indicates that based on his determination, the beneficiary holds a foreign equivalent of a Bachelor's of Science degree from an institution of post-secondary education in the United States. However, this recent evaluation is also found to be insufficient to demonstrate that the beneficiary holds the foreign equivalent of a U.S. Bachelor's degree for the reasons stated above.

USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 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 relies on the beneficiary's three-year bachelor's degree as being equivalent to a U.S. bachelor's degree. A three-year bachelor's degree will generally not be considered to be a "foreign equivalent degree" to a U.S. baccalaureate. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Where the analysis of the beneficiary's credentials relies on a combination of lesser degrees and/or work experience, the result is the "equivalent" of a bachelor's degree rather than a full U.S. baccalaureate or foreign equivalent degree required for classification as a professional.

Counsel asserts that the USCIS did not address all of the evidence including a more than 400 page document submitted with the prior evaluation from The evaluations from both rely on this attachment in their 2011 and 2013 evaluations. However, it is unclear what in the attachment changed or warranted their new findings in 2013, since their reference is purportedly the same. Nevertheless, as previously indicated, USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 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).

Counsel also asserts that USCIS should not utilize EDGE in their decisions because it is a fee-based source. USCIS utilizes EDGE as but one source in making a determination regarding educational credentials in addition to all evidence submitted into the record. Moreover, courts have agreed that the USCIS use of EDGE within reasonable standards of review. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), a federal district 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 comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), a federal district court upheld a USCIS conclusion 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. The EDGE report was provided to counsel with the NOID, and the petitioner was thus, given an opportunity to address these issues. The petitioner was provided an opportunity to rebut any derogatory information pursuant to 8 C.F.R. § 103.2(b)(16)(i) in the NOID, and also informed that any additional credentials evaluation submitted in response to the notice should specifically address the conclusions of EDGE set forth in the NOID.

The AAO has reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) as one source of information regarding the beneficiary's educational credentials. 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." See 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. An Author's Guide to Creating AACRAO International Publications" 5-6 (First ed. 2005), available for download at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx. 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.* at 11-12.

USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.

According to EDGE, a three-year Bachelor of Science degree from India is comparable to "three years

of university study in the United States."

The labor certification does not permit a lesser degree, a combination of lesser degrees, and/or a quantifiable amount of work experience, such as that possessed by the beneficiary.[6] Nonetheless, the director's RFE and the AAO's NOID permitted the petitioner to submit evidence that the beneficiary possessed an alternative to a U.S. bachelor's degree or a single foreign equivalent degree. As noted above, the petitioner has submitted two evaluations on appeal, and two additional evaluations in response to the AAO's NOID. However, these evaluations are inconsistent in their conclusions.

Counsel also asserts that UNESCO provides equivalence for the three-year degree to a U.S. bachelor's degree and UNESCO regulations are binding instruments, and therefore binding in this case. The evaluation submitted by the petitioner from the references as exhibits additional correspondence and research regarding educational equivalency including 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. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. 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. The United States was not a member of UNESCO between 1984 and 2002, and the Recommendation on the Recognition of Studies and Qualifications in Higher Education is not a binding legal agreement to recognize academic qualifications between UNESCO members. See http://en.unesco.org/ (accessed July 18, 2013).

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

The recommendation provided relates to "recognition" of qualifications awarded in higher education. Paragraph 1(e) defines recognition as follows:

> "Recognition" of a foreign qualification in higher education means its acceptance by the competent authorities of the State concerned (whether they be governmental or nongovernmental) as entitling its holder to be considered under the same conditions as those holding a comparable qualification awarded in that State and deemed comparable, for the purposes of access to or further pursuit of higher education studies, participation in research, the practice of a profession, if this does not require the passing of examinations or further special preparation, or all the foregoing, according to the scope of the recognition."

The UNESCO recommendation relates 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, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

After reviewing all of the evidence in the record, it is concluded that the petitioner has failed to establish that the beneficiary has a U.S. baccalaureate degree or a foreign equivalent degree from a college or university. The petitioner has failed to overcome the conclusions in EDGE with reliable, peer-reviewed information. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

The Beneficiary Must Meet the Minimum Requirements of the Offered Position

The beneficiary must also meet all of the minimum requirements of the offered position as set forth on the labor certification by the priority date. In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading

and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

H.4. Education: Bachelor's Degree, Computer Science.
H.5. Training: None required.
H.6. Experience in the job offered: None required.
H.7. Alternate field of study: Yes, any related field.
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: Any suitable combination of education, training and experience is acceptable.

As is discussed above, the beneficiary possesses a three-year Bachelor of Science Degree, from , India, which is equivalent to three-years of university study in the United States according to EDGE.

The terms of the labor certification require a four-year U.S. bachelor's degree in Computer Science or a foreign equivalent degree. The labor certification does not permit a lesser degree, a combination of lesser degrees, and/or a quantifiable amount of work experience, such as that possessed by the beneficiary. It is 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(l)(3)(i) (the labor certification underlying a petition for a professional must require at least a U.S. bachelor's degree or a foreign equivalent degree).

The beneficiary does not possess a four-year U.S. bachelor's degree or a foreign equivalent degree. Therefore, the petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date.

Beyond the decision of the director, the petitioner has also not sufficiently demonstrated that a *bona fide* job offer existed at the time the labor certification was filed. Under 20 C.F.R. §§ 626.20(c)(8) and 656.3, the petitioner has the burden when asked to show that a valid employment relationship exists, that a *bona fide* job opportunity is available to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987).

Matter of Silver Dragon Chinese Restaurant, 19 I&N Dec. 401 (Comm'r 1986), discussed a beneficiary's 50% ownership of the petitioning entity. The decision quoted an advisory opinion from the Chief of DOL's Division of Foreign Labor Certification as follows:

> The regulations require a 'job opportunity' to be 'clearly open.' Requiring the job opportunity to be bona fide adds no substance to the regulations, but simply clarifies that the job must truly exist and not merely exist on paper. The administrative interpretation thus advances the purpose of regulation 656.20(c)(8). Likewise requiring the job opportunity to be bona fide clarifies that a true opening must exist, and not merely the functional equivalent of self-employment. Thus, the administrative construction advances the purpose of regulations 656.20.

Id. at 405. Accordingly, where the beneficiary named in an alien labor certification application has an ownership interest in the petitioning entity, the petitioner must establish that the job is *bona fide*, or clearly open to U.S. workers. *See Keyjoy Trading Co.*, 1987-INA-592 (BALCA Dec. 15, 1987) (*en banc*). A relationship invalidating a *bona fide* job offer may also arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 2000-INA-93 (BALCA May 15, 2000).

The ETA Form 9089 specifically asks in Section C.9: "Is the employer a closely held corporation, partnership, or sole proprietorship in which the alien has an ownership interest, or is there a familial relationship between the owners, stockholders, partners, corporate officers, incorporators, and the alien?" The petitioner identified that it was an entity with 29 employees, and checked "no" to the question of whether the beneficiary was related to the owner. In determining whether the job is subject to the alien's influence and control, the adjudicator will look to the totality of the circumstances. *See Modular Container Systems, Inc.*, 1989-INA-228 (BALCA Jul. 16, 1991) (*en banc*). The same standard has been incorporated into the PERM regulations. *See* 69 Fed. Reg. 77326, 77356 (ETA) (Dec. 27, 2004).

The PERM regulation specifically addresses this issue at 20 C.F.R. § 656.17(l) and states in pertinent part:

> (l) Alien influence and control over job opportunity. If the employer is a closely held corporation or partnership in which the alien has an ownership interest, or if there is a familial relationship between the stockholders, corporate officers, incorporators, or partners, and the alien, or if the alien is one of a small number of employees, the employer in the event of an audit must be able to demonstrate the existence of a bona fide job opportunity, i.e., the job is available to all U.S. workers, and must provide to the Certifying Officer, the following supporting documentation:
>
> (1) A copy of the articles of incorporation, partnership agreement, business license or similar documents that establish the business entity;
>
> (2) A list of all corporate/company officers and shareholders/partners of the corporation/firm/business, their titles and positions in the business' structure, and a description of the relationships to each other and to the alien beneficiary;
>
> (3) The financial history of the corporation/company/partnership, including the total investment in the business entity and the amount of investment of each officer, incorporator/partner and the alien beneficiary; and

(4) The name of the business' official with primary responsibility for interviewing and hiring applicants for positions within the organization and the name(s) of the business' official(s) having control or influence over hiring decisions involving the position for which labor certification is sought.

(5) If the alien is one of 10 or fewer employees, the employer must document any family relationship between the employees and the alien.

The petitioner has the burden of establishing that a *bona fide* job opportunity exists when asked to show that the job opportunity is clearly open to U.S. workers. *See Matter of Amger Corp.*, 87-INA-545 (BALCA 1987); *see also* 8 U.S.C. § 1361.

In this case, the petitioner indicated in its labor certification filing that it sought to employ the beneficiary as a system analyst. However, according to the entity's website the beneficiary is listed under "management" and it further states that he joined the company to "lead its IT business." *See* (http://www.e-zencomp.com/management.html, accessed August 21, 2013). There is no indication on the petitioner's website that the beneficiary is currently or would in the future be employed in a different capacity other than as a part of its management, who leads its IT business. The petitioner has not demonstrated by the evidence in the record that the DOL was aware of the beneficiary's role as a lead manager in the company at the time the labor certification was filed. This information suggests that the job opportunity was subject to the beneficiary's influence and control, and that the petitioner may not have intended to employ the beneficiary in the position offered.

In addition, two Notices of Entry of Appearance as Attorney or Accredited Representative, Form G-28s, filed with the petitioner's response to the AAO's NOID, were signed by the beneficiary as the individual directing the appeal. The record shows that on one of these Form G-28s dated June 25, 2013, Part 3, Section 5 indicates it is submitted at the request of the named beneficiary, and is signed by the beneficiary. The second Form G-28, also dated June 25, 2013, although indicating it is submitted at the request of the petitioning entity on Part 3, Section 5, was likewise signed by the beneficiary. The beneficiary's signatures on this second Form G-28 is in contravention to the regulations. *See* 8 C.F.R. § 103.3(a)(1)(iii). The petitioner has provided two Form G-28s indicating that one was for the petitioning entity, and the other was for beneficiary both containing the beneficiary's signature. This would suggest that the beneficiary is directing the job opportunity, as well as the petition, and the appeal of its decision.

In the instant matter, the AAO requested a new Form G-28, properly completed and signed by the petitioner, on August 21, 2013. A new Form G-28 was submitted on August 22, 2013, and signed by a different individual indicating it was on behalf of the petitioner. This new Form G-28 dated August 22, 2013, was also accompanied by a letter. The letter is signed by Mr. [redacted] who indicates he is the Vice President of the petitioning entity, and the designated official authorized to sign the Form G-28 on behalf of the pending I-140 petition for the beneficiary. However, in analyzing the totality of the circumstances, the record demonstrates: that the beneficiary is listed on the company's public website as a leading manager of the entity, with the responsibility for controlling its entire IT department, rather than as an employee who is being hired to work as a

system analyst in accordance with the terms of the labor certification; and in addition, the beneficiary initially signed the Form G-28 for the petitioner, indicating under penalty of perjury that he was duly authorized to consent to counsel's representation on behalf of the petitioner. In a totality of the circumstances analysis, this evidence casts doubt on whether a *bona fide* job offer existed at the time the labor certification was filed pursuant to 20 C.F.R. § 656.17(c).

Matter of Ho, 19 I&N Dec. 582, 591 (BIA 1988), states:

> Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

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

Beyond the decision of the director, the petitioner has also not demonstrated that a *bona fide* job offer existed at the time the labor certification was filed. The petitioner has not established that a valid job offer was available to all eligible American workers during the labor certification process, as it has insufficiently shown that there was intent to employ the beneficiary in the position offered in accordance with the terms of the labor certification. Thus, the petitioner has not shown that a *bona fide* position was being offered at the time the labor certification was filed, or at any time thereafter.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.