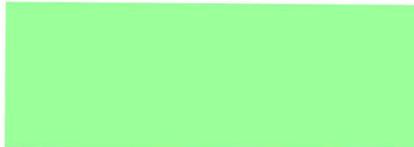




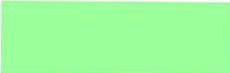
**U.S. Citizenship
and Immigration
Services**

(b)(6)



DATE: **OCT 17 2013**

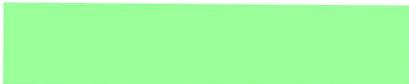
OFFICE: NEBRASKA SERVICE CENTER

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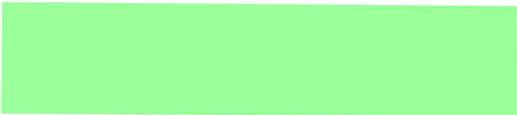
Petitioner:

Beneficiary:



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

ON BEHALF OF PETITIONER:



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,

A handwritten signature in cursive script, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska 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 a business specializing in “semiconductor manufacturing equipment.” It seeks to permanently employ the beneficiary in the United States as a “Software Engineer I.” The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).

The petition is accompanied by a Form ETA 750, Application for Alien 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 February 22, 2005. *See* 8 C.F.R. § 204.5(d).

The director’s decision denying the petition concludes that the beneficiary did not possess a U.S. bachelor’s degree or foreign equivalent as required by the terms of the labor certification and for classification as a professional.

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

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

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

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

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

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(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.

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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In *Snappnames.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 studied at the following institutions:

- At [REDACTED] India, from April 1987 to January 1991, receiving an "AS" degree in Economics.
- At the [REDACTED] India, from April 1989 to October 1989, receiving a certificate in "Computer Concepts with COBOL."
- At [REDACTED] India, from March 1993 to September 1994, receiving a diploma in "Information Systems and Management."

- At [REDACTED] Canada, from June 1998 to June 1999, receiving a diploma in “Computer Programming.”

The record contains the following evidence of the beneficiary’s educational credentials noted above:

- A certificate of the beneficiary’s “Bachelor of Arts” degree in Economics at [REDACTED] which states that the beneficiary “passed the three years degree course examination” that was held in January 1991.
- A certificate in “Computer Concepts with COBOL” at the [REDACTED] India, from April 1989 to October 1989.
- A certificate of the beneficiary’s diploma in “Information Systems and Management” at [REDACTED] which was issued on September 28, 1994.
- A diploma in “Computer Programming” at [REDACTED] Canada, from June 1998 to June 1999.

The record also contains evaluations of the beneficiary’s educational credentials from the following individuals:

- By [REDACTED] on May 6, 2009, concluding that based solely on the beneficiary’s Bachelor of Arts degree from [REDACTED], she “has attained the equivalent of a Bachelor’s Degree with a Concentration in Computer Science from a Regionally Accredited College or University in the United States.”
- By Dr. [REDACTED] on May 5, 2009, concluding that the beneficiary’s degree from [REDACTED] alone is equivalent to a “Bachelor’s degree with a Concentration in Computer Science, representing 120 semester credit hours, from an institution of postsecondary education in the United States of America.”
- By Dr. [REDACTED] on April 27, 2009, concluding that the beneficiary’s combined studies in India and Canada are equivalent to a “Bachelor of Science Degree in Computer Science from a US regionally accredited institution of higher learning.”
- By [REDACTED] on April 6, 2009, concluding that the beneficiary holds the equivalent of a “Bachelor of Arts Degree in Economics & Computer Science from an accredited college or university in the United States.” She reaches this conclusion based upon the beneficiary’s “three years of undergraduate Economics university coursework, combined with her 2+ years of additional Computer Applications coursework and diplomas.”
- By Dr. [REDACTED] on May 23, 2007, concluding that the combination of the beneficiary’s three-year degree from [REDACTED] and her post-graduate diploma in “Information and Systems Management” from [REDACTED] constitute the equivalent of a “Bachelor of Science degree in Computer Information Systems from an accredited institution of higher education in the United States.”

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).

As stated above, the evaluations from Dr. [REDACTED] and Ms. [REDACTED] rely on the beneficiary's three-year Bachelor of Arts degree in Economics alone from [REDACTED] and conclude that this single degree constitutes the equivalent of a U.S. Bachelor's degree in Computer Science. 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).

Dr. [REDACTED] states the following in his May 5, 2009 evaluation:

[The beneficiary's] degree contains, in our opinion, and on the basis of comparison of similar awards where official documentation has confirmed the total of contact hours, a total of 120 credit hours when converted to the United States system.

In the course of preparing well over one thousand expert opinions for use before USCIS, many dealing with the Indian three year bachelor's degree, I have reviewed transcripts from all major Indian universities over a forty year timespan (1960s – 2000+). It is general practice for Indian transcripts to contain marks but neither credit hours nor contact hours. However, some institutions do indeed issue transcripts with contact hours, and in addition a number of institutions have issued letters in support of their graduates in which the total of contact hours is stated. Together, this constitutes a body of evidence, and that evidence indicates that in the overwhelming majority of cases, the number of contact hours in an Indian 3yr bachelor's degree exceeds 1800.

The record contains an undated letter from Dr. [REDACTED] in which he also concludes that Indian three-year degrees exceed the 1800 contact hours that U.S. universities require for four-year bachelor's degrees. He cites, among other things, a letter from the Principal of [REDACTED] and a letter from the Principal of [REDACTED] in support of this conclusion. Dr. [REDACTED] further states the following in this letter:

At [REDACTED], we have examined many hundreds of three-year bachelor's degree official transcripts from Indian universities in the course of our professional practice. On those occasions when contact hours are explicitly indicated

on the transcript, they are invariably in excess of 1800. We have never examined such a transcript where a lower total has been the case.

The AAO does not find Dr. [REDACTED]'s evaluation or his undated letter to be convincing evidence that the beneficiary's three-year degree is equivalent to a four-year degree in the United States. In the instant case, the transcripts from [REDACTED] do not state the number of contact hours of the beneficiary's degree, and the letters that Dr. [REDACTED] cites regarding the contact hours of Indian degrees are not associated with [REDACTED] and do not appear to have sufficient credibility to be able to speak to the contact hours of every educational institution in India.

The evaluation from Dr. [REDACTED] references as exhibits additional correspondence and research regarding educational equivalency, including excerpts from the United Nations Educational Scientific and Cultural Organization (UNESCO) regarding recognition of foreign educational qualifications. The petitioner has submitted this UNESCO report as part of the record. However, 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.⁴

Of the 138 pages of UNESCO materials, only two are relevant. 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.

⁴ See http://www.unesco.org/education/studyingabroad/tools/recommendation_cover.shtml (accessed September 20, 2013).

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.

Further, the evaluations in the record by Dr. [REDACTED] and Ms. [REDACTED] do not discuss how the beneficiary’s three-year degree in Economics is the equivalent of a U.S. Bachelor’s degree in “Computer Science” or a “related technical discipline.” The beneficiary’s transcripts for this degree state courses taken in “political science, economics, philosophy, classics or second language, history, physics, chemistry, English, mathematics, biology, geology and statistics.” These transcripts also reflect the courses the beneficiary took in her “Honours subject.” None of these subjects relate to “Computer Science” or a “related technical field.” The evaluations from Dr. [REDACTED] and Ms. [REDACTED] do not articulate any basis by which they reached their conclusion that the beneficiary’s Bachelor of Arts degree in Economics is the foreign equivalent degree to a U.S. Bachelor of Science degree in Computer Science or a related technical discipline. Ms. [REDACTED]’s evaluation explicitly references and appears to rely upon the “Expert Opinion Letter” from Dr. [REDACTED] “for specific details;” however, Ms. [REDACTED]’s evaluation fails to indicate what portion(s) of Dr. [REDACTED]’s evaluation she relied upon to reach her conclusion.

The other three evaluations in the record rely upon a combination of the beneficiary’s degree at [REDACTED] in addition to her three-year Bachelor of Arts degree in Economics from [REDACTED] to conclude that the beneficiary possesses the equivalent of a U.S. bachelor’s degree in Computer Science. 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. Whether this equivalency meets the requirements of the “skilled worker” classification is discussed below.

The AAO has 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.” See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.⁵

⁵ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court

According to EDGE, a three-year Bachelor of Arts degree from India is comparable to “three years of university study in the United States.” Therefore, based on the conclusions of EDGE, the evidence in the record on appeal was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor’s degree in “Computer Science” or a “related technical discipline.”

The AAO informed the petitioner of EDGE’s conclusions in a Request for Evidence (RFE) dated June 11, 2013, and requested that the petitioner provide evidence that the beneficiary possessed the minimum education requirements for the position offered as expressed on the labor certification. Specifically, the AAO requested documentation of the petitioner’s recruitment report, the prevailing wage determination, all online and print recruitment conducted for the position, the posted notice of the filing of the labor certification, and all resumes received in connection with the recruitment efforts. In response to the RFE, the petitioner submitted: an unsigned letter, dated July 8, 2013, on [REDACTED] stationery; the evaluations noted above; notes from an April 12, 2007 [REDACTED] Liaison Committee Meeting at the Nebraska Service Center; and what appears to be a redacted evaluation by [REDACTED], dated August 16, 2007, in an unrelated case. However, the petitioner did not submit the documentation of the petitioner’s recruitment efforts or correspondence with DOL as the AAO had requested in its RFE. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14).

EDGE also discusses both post-secondary diplomas, for which the entrance requirement is completion of secondary education, and postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a post-secondary diploma is comparable to one year of university study in the United States but only “upon completion of one to two years of tertiary study beyond the Higher Secondary Certificate (or equivalent).” Further, EDGE does not suggest that, if combined with a three-year degree, a post-secondary Diploma may be deemed a foreign equivalent degree to a U.S. baccalaureate.⁶ EDGE further asserts that a postgraduate diploma following a three-year bachelor’s degree “represents attainment of a level of

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. v. USCIS*, 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.

⁶ See <http://edge.aacrao.org/country/credential/post-secondary-diploma?cid=single> (accessed October 2, 2013).

education comparable to a bachelor's degree in the United States.”⁷ The “Advice to Author Notes,” however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree. Rarely you may find a full time 2 year post graduate diploma.

Id. The petitioner did not provide any new or additional evaluations in response to the AAO's RFE. The redacted evaluation in the record from [REDACTED] states that [REDACTED] is a Post-Secondary Institute and a recognized educational institution for computer related fields” and that it “works with major corporations and is affiliated with several colleges and universities.” It appears that the petitioner seeks to rely upon this evaluation to conclude that the beneficiary's degree from [REDACTED] is a post-secondary diploma from an accredited institution of higher education in India. However, this conclusion is not supported by the record, [REDACTED]'s website, or by the AICTE. Further, as noted above, EDGE states that a post-secondary diploma is comparable to one year of university study in the United States but only when this is based on “one to two years of tertiary study beyond the Higher Secondary Certificate (or equivalent).” The beneficiary's education at [REDACTED] lasted only six months. Therefore, the beneficiary's education at [REDACTED] is not a post-secondary diploma to meet EDGE's conclusions.

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

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

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

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other

⁷ *See* <http://edge.aacrao.org/country/credential/post-graduate-diploma-pgd?cid=single> (accessed October 2, 2013).

requirements of the [labor certification]. The minimum requirements for this classification are at least two years of training or experience.

The determination of whether a petition may be approved for a skilled worker is based on the requirements of the job offered as set forth on the labor certification. *See* 8 C.F.R. § 204.5(1)(4). The labor certification must require at least two years of training and/or experience. Relevant post-secondary education may be considered as training. *See* 8 C.F.R. § 204.5(1)(2).

Accordingly, a petition for a skilled worker must establish that the job offer portion of the labor certification requires at least two years of training and/or experience, and the beneficiary meets all of the requirements of the offered position set forth on the labor certification.

In evaluating the job offer portion of the labor certification to determine the required qualifications for the position, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Where the job requirements in a labor certification are not otherwise clearly 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:

EDUCATION

Grade School: -

High School: -

College: “X.”

College Degree Required: “B.S. (or foreign equivalent).”

Major Field of Study: “Computer Science” or a “related technical discipline.”

TRAINING: -

EXPERIENCE: -

OTHER SPECIAL REQUIREMENTS: “Knowledge of root cause analysis, software test automation, and real-time software development.”

As is discussed above, the beneficiary possesses a three-year Bachelor of Arts degree in Economics which EDGE states is the equivalent to three years of study toward a U.S. Bachelor's degree. EDGE also notes the differences between post-secondary diplomas, for which the entrance requirement is completion of secondary education, and postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a post-secondary diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, it may be deemed a foreign equivalent degree to a U.S. baccalaureate.

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.⁸ Nonetheless, the AAO RFE permitted the petitioner to submit any evidence that it intended the labor certification to require an alternative to a U.S. bachelor's degree or a single foreign equivalent degree, as that intent was explicitly and specifically expressed during the labor certification process to the DOL and to potentially qualified U.S. workers.⁹ Specifically, the AAO requested that the petitioner provide a copy of the signed recruitment report required by 20 C.F.R. § 656, together with copies of the prevailing

⁸ 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.

⁹ In limited circumstances, USCIS may consider a petitioner's intent to determine the meaning of an unclear or ambiguous term in the labor certification. However, an employer's subjective intent may not be dispositive of the meaning of the actual minimum requirements of the offered position. See *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008). The best evidence of the petitioner's intent concerning the actual minimum educational requirements of the offered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The timing of such evidence ensures that the stated requirements of the offered position as set forth on the labor certification are not incorrectly expanded in an effort to fit the beneficiary's credentials. Such a result would undermine Congress' intent to limit the issuance of immigrant visas in the professional and skilled worker classifications to when there are no qualified U.S. workers available to perform the offered position. See *Id.* at 14.

wage determination, all recruitment conducted for the position, the posted notice of the filing of the labor certification, and all resumes received in response to the recruitment efforts.

In response to the AAO's RFE, the petitioner again submitted evaluations by Ms. [REDACTED] of [REDACTED] Dr. [REDACTED] Dr. [REDACTED] Ms. [REDACTED] and Dr. [REDACTED] of [REDACTED]. The evaluations from Dr. [REDACTED] Ms. [REDACTED] and Dr. [REDACTED] are those that are relevant to whether the beneficiary meets the requirements for classification as a "skilled worker" under Section 203(b)(3)(A)(i) of the Act.¹⁰

The record also does not support the conclusions of the other three evaluations. The evaluation from Dr. [REDACTED] concludes that the beneficiary's studies in "Information Systems and Management" at [REDACTED] India, and her diploma in "Computer Programming" at [REDACTED] Canada, in addition to the beneficiary's three-year degree from [REDACTED]¹¹ are equivalent to a "Bachelor of Science Degree in Computer Science from a US regionally accredited institution of higher learning." However, this evaluation does not specifically address how the courses the beneficiary took in Economics at Patna University contributed to an equivalency of a "Computer Science" degree.

The evaluation from Ms. [REDACTED] concludes that the beneficiary's postsecondary degree from [REDACTED], her diploma from [REDACTED] and her diploma from [REDACTED] represent the equivalent of a "Bachelor of Arts Degree in Economics & Computer Science from an accredited college or university in the United States." The evaluator has not provided any specific details as to how she concludes that the beneficiary's three-year course of study in Economics, her six month course in "Computer Concepts with [REDACTED] her one year and six months of study in "Information Systems and Management" at [REDACTED] and her one year of study in "Computer Programming" at [REDACTED] together constitute the equivalent of a four-year U.S. bachelor's degree with a dual major in Economics and Computer Science.

As stated above, the beneficiary's diploma from [REDACTED] India, constitutes post-secondary education as this was awarded prior to the beneficiary's three-year degree from [REDACTED]. EDGE states that a post-secondary diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, it may be deemed a foreign equivalent degree to a U.S. bachelor's degree. EDGE also provides that a post-secondary

¹⁰ The evaluations by Ms. [REDACTED] and Dr. [REDACTED] discussed above, relate specifically to the issue of whether the beneficiary's three-year Bachelor of Arts degree in Economics alone is the equivalent of a U.S. Bachelor's degree in "Computer Science" as a single source degree. As these evaluations conflict with the other evaluations provided by the petitioner, and with the conclusions of EDGE, they will not be discussed again separately here.

¹¹ Dr. [REDACTED] refers to the beneficiary's degree from [REDACTED] as a "Bachelor of Commerce" degree "with honours."

diploma is “awarded upon completion of one to two years of tertiary study beyond the Higher Secondary Certificate (or equivalent).” In this case, the beneficiary’s education at [REDACTED] constituted only six months and does not constitute a post-secondary diploma. The record contains an evaluation by [REDACTED] dated August 16, 2007, which appears to have been used in an unrelated case, concluding that [REDACTED] is a Post-Secondary Institute and a recognized education institution for computer related fields” and that it “works with major corporations and is affiliated with several colleges and universities.” However, this does not demonstrate that [REDACTED] is a degree granting institution, and neither [REDACTED]’s website nor any other evidence in the record establishes that it holds itself out to be such an institution.

The May 23, 2007 evaluation from Dr. [REDACTED] concludes that the beneficiary’s three-year degree from [REDACTED] and her post-graduate diploma in “Information and Systems Management” from [REDACTED] constitute the equivalent of a “Bachelor of Science degree in Computer Information Systems from an accredited institution of higher education in the United States.” Similar to the evaluations from Dr. [REDACTED] of [REDACTED] and Ms. [REDACTED] Dr. [REDACTED] has not stated how the beneficiary’s three-year degree in Economics at [REDACTED] in conjunction with her one year and six months of post-graduate study in “Information and Systems Management” at [REDACTED] is equivalent to a Bachelor’s degree in “Computer Science” or a “related technical discipline.”

The beneficiary possesses a diploma in “Information Systems and Management” at [REDACTED] India. Dr. [REDACTED] states that this is a postgraduate diploma. EDGE states that a postgraduate diploma following a two-year bachelor’s degree represents attainment of a level of education comparable to one year of university study in the United States. EDGE also states that a postgraduate diploma following a three-year bachelor’s degree represents attainment of a level of education comparable to a bachelor’s degree in the United States. However, the “Advice to Author Notes” section states the following:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor’s degree.

While a post-graduate diploma, in conjunction with a three-year bachelor’s degree, may constitute the equivalent of a U.S. bachelor’s degree, the evidence in the record on appeal does not establish that the beneficiary’s diploma was issued by an accredited university or institution approved by AICTE, or that a two- or three-year bachelor’s degree was required for admission into the program of study. Therefore, the record does not establish that the beneficiary possessed a postgraduate diploma issued by an institution accredited by the AICTE as of the priority date.

Additionally, the AAO requested evidence of the petitioner's recruitment report to ascertain its intent as expressed to potential U.S. workers regarding whether the petitioner would accept a combination of lesser degrees to meet the requirements of the labor certification. However, the petitioner did not submit a copy of its signed recruitment report, or copies of its recruitment or correspondence with DOL, with the accompanying documentation as requested in the AAO's RFE. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). The unsigned letter on the petitioner's stationery does not address the AAO's request for this evidence.

The petitioner failed to establish that the terms of the labor certification are ambiguous and that the petitioner intended the labor certification to require less than a four-year U.S. bachelor's or foreign equivalent degree, as that intent was expressed during the labor certification process to the DOL and potentially qualified U.S. workers.

Therefore it is concluded that the terms of the labor certification require a four-year U.S. bachelor's degree in "Computer Science" or in a "related technical discipline" or a foreign equivalent degree. The beneficiary does not possess such a degree. The petitioner failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification by the priority date. Therefore, the beneficiary does not qualify for classification as a skilled worker.

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification specified an educational requirement of four years of college and a "B.S. or foreign equivalent." The district court determined that "B.S. or foreign equivalent" relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word "equivalent" in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14.¹² In addition, the court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language

¹² In *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), the court concluded that USCIS "does not have the authority or expertise to impose its strained definition of 'B.A. or equivalent' on that term as set forth in the labor certification." However, the court in *Grace Korean* makes no attempt to distinguish its holding from the federal circuit court decisions cited above. Instead, as legal support for its determination, the court cites to *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993) (the U.S. Postal Service has no expertise or special competence in immigration matters). *Id.* at 1179. *Tovar* is easily distinguishable from the present matter since USCIS, through the authority delegated by the Secretary of Homeland Security, is charged by statute with the enforcement of the United States immigration laws. See section 103(a) of the Act.

of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id.* See also *Maramjaya v. USCIS*, Civ. Act No. 06-2158 (D.D.C. Mar. 26, 2008) (upholding USCIS interpretation that the term "bachelor's or equivalent" on the labor certification necessitated a single four-year degree).

In the instant case, unlike the labor certifications in *Snapnames.com, Inc.* and *Grace Korean*, the required education is clearly stated on the labor certification and does not include the language "or equivalent" or any other alternatives to a four-year bachelor's degree.

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

The 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.