



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: SEP 04 2013

OFFICE: TEXAS SERVICE CENTER FILE: [REDACTED]

IN RE:

Petitioner: [REDACTED]

Beneficiary: [REDACTED]

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)(A)(3)(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, [REDACTED] indicates that it is a software development company. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. On the Form I-140, Immigrant Petition for Alien Worker, the petitioner marked box "e" at Part 2, indicating that it seeks to classify the beneficiary as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the Department of Labor (DOL), accompanied the petition. The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is December 29, 2010. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition on March 1, 2012, concluded 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 director thus, denied the petition. The director determined that the beneficiary's Bachelor of Commerce degree could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree in Computer Science, because there was insufficient evidence to demonstrate that the beneficiary holds a single degree which qualifies as a foreign equivalent to a U.S. baccalaureate degree.

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 and after its notice of intent to deny (NOID) dated June 3, 2013.¹

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

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:

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 the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

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

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

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

It is 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). *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.

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. 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(1)(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)(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).

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).

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 of Commerce from [REDACTED] India issued in 1999. The record of proceedings also indicates that the beneficiary possesses a diploma in Software Technology & Systems Management, from the [REDACTED] India issued in 2000.

On appeal, the AAO issued a NOID to the petitioner. In this NOID, the AAO noted that there was insufficient evidence in the record of proceeding to demonstrate that the beneficiary possessed a single degree which would be equivalent to a U.S. bachelor's degree. It was further indicated that, according to the American Association of Collegiate Registrars and Admissions Officer's (AACRAO) EDGE database, a bachelor's degree in commerce is equivalent to three years of undergraduate study in the United States. Further, that there was no evidence indicating that [REDACTED] is an accredited institution, and that the labor certification application, as certified, did not demonstrate

the petitioner would accept a combination of degrees which are individually less than a single-source U.S. bachelor's degree or its foreign equivalent.

The record contains a copy of the beneficiary's Bachelor of Commerce diploma and transcripts from [REDACTED] India issued in 1999. The petitioner also submits an advanced diploma received by the beneficiary from [REDACTED] and transcripts indicating that this diploma was received on April 29, 2000.

The petitioner additionally submitted four credentials evaluations. The first dated, November 2010, from [REDACTED] describes the beneficiary's diploma from the [REDACTED] as a Bachelor of Commerce and concludes that it, along with the beneficiary's four years and 10 months of employment experience is equivalent to a Bachelor's of Science Degree in the United States. As stated in the NOID, this evaluator did not utilize the beneficiary's diploma from [REDACTED] in his assessment, or explain the basis for its omission, and the petitioner did not address this issue in its response to the NOID. In addition, although the evaluator used a combination of the beneficiary's education and employment experience to conclude that she has obtained a foreign equivalent degree to a U.S. bachelor's, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience.

The second evaluation from [REDACTED] dated, December 15, 2011 indicates that the beneficiary's coursework from the [REDACTED] is substantially similar to those courses required towards the completion of three years of university study in the United States. The evaluation also indicated that based on the evaluator's assessment of [REDACTED]'s reputation, and the examination passed by the beneficiary, that diploma in and of itself would be equivalent to a four-year Bachelor's degree in Computer Information Systems from an accredited college or University in the United States. The evaluation from [REDACTED] indicates that [REDACTED] is an accredited institution by both All India Council for Technical Education (AICTE), and the Department of Electronics and Accreditation of Computer Courses (DOEACC). Upon appeal, the petitioner provided no documentation to support this assertion. The petitioner also provided no documentation to support this statement in its response to the NOID dated, June 28, 2011, but instead provided the same evaluation from [REDACTED] dated, December 15, 2011. As previously noted in the NOID, a review of AICTE's list of accredited institutions does not reveal [REDACTED] on this listing. See, [REDACTED] (accessed July 16, 2013). Therefore, the petitioner has not demonstrated that [REDACTED] is an accredited institute of higher education. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The third evaluation is from Mr. [REDACTED] for the [REDACTED]. The evaluator relied on a UNESCO document relating to admission to graduate schools, training programs and eligibility to practice in a profession to conclude that he beneficiary's Bachelor of Commerce degree is equivalent to a U.S. bachelor's degree. However, as stated in the NOID, nowhere does this

document suggest that a three-year degree should be deemed equivalent to a four-year degree for purposes of qualifying for inclusion in a class of individuals defined by statute and regulations as eligible for immigration benefits. The NOID also indicated that the AAO found Mr. [REDACTED]'s conclusion of a "functional parity" of the beneficiary's coursework in commerce with a concentration in computer science and speculation that admission requirements for post-graduate studies could demonstrate the equivalency of two disparate undergraduate degrees because a U.S. university might admit a student with a degree in various disciplines to a master's program in computer science to be unpersuasive and not supported by the record. The AAO indicated in its NOID that the evaluation was not found to be a credible basis on which to determine that the beneficiary's Bachelor of Commerce degree from the [REDACTED] with a major in commerce, is equivalent to a four-year bachelor of science in computer science, as required on the labor certification. The petitioner did not address this issue within its response to the NOID. Therefore, this evaluation is not found to be probative in establishing the beneficiary possesses the requisite educational credentials as indicated in the labor certification.

The fourth and final evaluation from Career Consulting International dated, March 13, 2012 was unsigned but as indicated in the NOID, the evaluator indicated the beneficiary's Bachelor of Commerce degree was equivalent to a U.S. Bachelor of Computer Science degree without providing any substantive basis for this finding. The evaluator also offered no information regarding the omission of the beneficiary's [REDACTED] diploma in the evaluation of the beneficiary's credentials. This issue was also not addressed in the petitioner's response to the NOID.

As previously stated in the NOID none of the evaluations submitted were consistent in their utilization of the beneficiary's credentials for evaluation, and they provided insufficient support for the basis of their determinations. The petitioner was given an opportunity to address these issues; however, the petitioner did not directly address these inconsistencies within its response to the NOID when given the opportunity to do so.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The petitioner relies on the beneficiary's three-year bachelor's degree combined with the beneficiary's diploma from NIIT in its assertions that the beneficiary's educational credentials are the foreign 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.

As advised in the NOID issued to the petitioner by this office, we have reviewed the Electronic

Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). According to its website, AACRAO is “a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world.” See <http://www.aacrao.org/About-AACRAO.aspx>. Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* EDGE is “a web-based resource for the evaluation of educational credentials.” <http://edge.aacrao.org/info.php>. Authors for EDGE must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials.² 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.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.³

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

The four credential evaluations in the record all rely on varying and inconsistent permutations of the beneficiary’s education and/or employment experience to create their assessments that she possesses a foreign equivalent degree. Only two of the evaluations concluded that the beneficiary’s three-year Bachelor of Commerce alone is the foreign degree equivalent of a four-year U.S. bachelor’s degree. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); see also *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011) (expert witness testimony may be given different weight depending on the extent of the

² See *An Author’s Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/Libraries/Publications_Documents/GUIDE_TO_CREATING_INTERNATIONAL_PUBLICATIONS_1.sflb.ashx.

³ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien’s three-year foreign “baccalaureate” and foreign “Master’s” degree were only comparable to a U.S. bachelor’s degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

expert's qualifications or the relevance, reliability, and probative value of the testimony). Additionally, the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

The ETA Form 9089 does not provide that the minimum academic requirements of a Bachelor of Science degree in Computer Science, Engineering, Science, CIS, or MIS, might be met through three years of college or some other formula other than that explicitly stated on the ETA Form 9089.

Counsel in their response to the AAO's NOID indicates that the beneficiary's advanced diploma from NIIT is a single degree equivalent to a bachelor's degree, and that the instant case is analogous to another AAO decision in which a decision to sustain the appeal was based on a finding that a post-graduate degree which requires a three-year bachelor's for entrance to the program and was awarded upon completion of one-year of study beyond the three-year bachelor's degree, was in fact a foreign equivalent degree as required under the labor certification after a review of EDGE. While 8 C.F.R. § 103.3(c) provides that precedent decisions of United States Citizenship and Immigration Services (USCIS), formerly the Service or INS, are binding on all USCIS employees in the administration of the Immigration and Nationality Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). The case indicated by counsel is not an AAO published precedent decision. Therefore, it would not be binding in the instant case.

Further, the facts of the referenced case are not present in the instant matter. As previously advised in the NOID, EDGE provides a great deal of information about the educational system in India. It discusses both Post-Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate 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, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts 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." 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.

In its NOID, the AAO also advised the petitioner that the evidence in the record did not support the statements by its credential evaluations that [REDACTED] was an institution which has been accredited, or that a two- or three-year bachelor's degree was required for admission into the program of study. The petitioner was informed that they must submit competent, objective evidence to establish the entrance requirements and accreditation of the program from [REDACTED]. The petitioner has offered no new evidence of [REDACTED]'s accreditation, or that a two-or-three-year bachelor's degree was required for the beneficiary's admission into its program of study in its response to the NOID.

Counsel in their response to the NOID also re-submits copies of two letters dated January 7, 2003 and July 23, 2003, respectively, from [REDACTED] of the INS Office of Adjudications to counsel in other cases, expressing an opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). Within the July 2003 letter, Mr. [REDACTED] states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree.

As previously indicated in the NOID, it must be noted that private discussions and correspondence solicited to obtain advice from USCIS are not binding on the AAO or other USCIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm'r 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in Mr. [REDACTED] correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. We do not find the determination of the credentials evaluation 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 beneficiary does not have a United States baccalaureate degree or a foreign equivalent degree, and, thus, does not qualify for preference visa classification 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:
Minimum level required: Bachelor’s.

- 4-B. Major Field Study:
Either, CS, Eng(any), Science(any), CIS, MIS.

- 7. Is there an alternate field of study that is acceptable?
The petitioner checked “no” to this question.

- 8. Is there an alternate combination of education and experience that is acceptable?
The petitioner checked “no” to this question.

- 9. Is a foreign educational equivalent acceptable?
The petitioner listed “yes” that a foreign educational equivalent would be accepted.

- 6. Experience:
Not required in the position offered.

- 14. Specific skills or other requirements: “Any combination of education, training & experience equivalent to bachelors is acceptable. ”

As is discussed above, the beneficiary possesses a three-year Bachelor of Commerce degree from the

India, which according to EDGE is equivalent to “3 years of university study in the United States, and credit may be awarded on a course-by-course basis.”

The terms of the labor certification require a U.S. bachelor’s degree in CS, English (any), Science (any), CIS, MIS, 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(1)(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.

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. The petitioner also failed to establish that the beneficiary met the minimum educational requirements of the offered position set forth on the labor certification. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) 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.