

(b)(6)

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

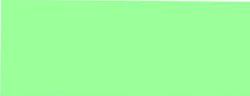


U.S. Citizenship
and Immigration
Services

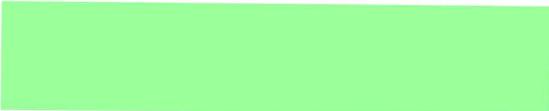


DATE: **FEB 27 2014**

OFFICE: TEXAS SERVICE CENTER

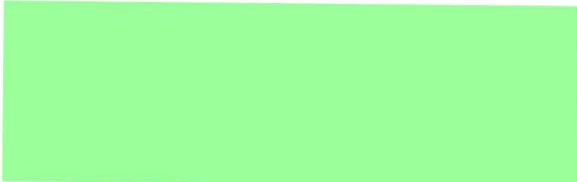
FILE: 

IN RE: Petitioner:
 Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3)(ii) of the
 Immigration and Nationality Act, 8 U.S.C. § 1153(b)(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 describes itself as a financial services provider. It seeks to permanently employ the beneficiary in the United States as an assistant vice president, senior programmer. 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).

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 December 20, 2011. 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. 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(1)(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’s degree in Mathematics, Physics, and Computer Science from [REDACTED] completed in 1997.

The record contains a copy of the beneficiary's bachelor’s degree in Mathematics, Physics, and Computer Science and transcripts from [REDACTED] completed in 1997.

The petitioner submitted a credential evaluation from [REDACTED] founder of [REDACTED] and the president of [REDACTED]. The petitioner also submitted a credential evaluation from Dr. [REDACTED] dated December 30, 2012, based largely on the work of [REDACTED].

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.

³ According to this university’s website, [REDACTED] (accessed 08/12/2013), it awards degrees based on experience.

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.

The evaluations from [REDACTED] President of [REDACTED] and from Dr. [REDACTED] the beneficiary has sufficient contact hours to meet the requirements of 120 credit hours when converted to the United States system. Dr. [REDACTED] goes on at length about Carnegie Units and Indian degrees in general, concluding that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate but makes no attempt to assign credits for individual courses. Dr. [REDACTED] credibility is diminished as he distorts an article by [REDACTED]. Specifically, Dr. [REDACTED] asserts that this article concludes that because the United States is willing to consider three-year degrees from Israel and the European Union, "Indian bachelor degree-holders should be provided the same opportunity to pursue graduate education in the U.S." While this is the conclusion of the article, the specific means by which Indian bachelor degree holders might pursue graduate education in the United States provided in the discussion portion of the article in no way suggests that Indian three-year degrees are, in general, comparable to a U.S. baccalaureate. Specifically, the article proposes accepting a first class honors three-year degree *following* a secondary degree from a CBSE or CISCE program *or* a three-year degree *plus* a post graduate diploma from an institution that is accredited or recognized by the NAAC and/or AICTE. The record contains no evidence that the beneficiary in this matter received his secondary degree from a CBSE or CISCE program. Moreover, he completed his three-year degree in the second division, not the first division. Finally, the record lacks evidence that the beneficiary completed a post-graduate diploma. Thus, Dr. [REDACTED] reliance on this article is disingenuous.

Dr. [REDACTED] 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.*

Ultimately, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees. The petitioner has submitted materials about the unit posted at "Wikipedia." Online content from "Wikipedia" is subject to the following general disclaimer:

Wikipedia is an online open-content collaborative encyclopedia, that is, a voluntary association of individuals and groups working to develop a common resource of human knowledge. The structure of the project allows anyone with an Internet connection to alter its content. Please be advised that nothing found here has necessarily been reviewed by people with the expertise required to provide you with complete, accurate or reliable information.

See http://en.wikipedia.org/wiki/Wikipedia:General_disclaimer, accessed on December 21, 2013. Reliance on *Wikipedia* is not favored by federal courts. See *Badasa v. Mukasey*, 540 F. 3d 909 (8th Cir. 2008). Moreover, the petitioner has not demonstrated that the use of this system produces

consistent results, as would be expected of a workable system. The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject.⁴ For example, 120 hours of classroom time was determined to be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school.⁵ This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class. The Carnegie Unit does not apply to higher education.⁶

The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. Robert A. Watkins, The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf, accessed 01/12/2014 and incorporated into the record of proceedings, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

Dr. [REDACTED] also relies on an article he coauthored with Dr. [REDACTED]. 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.

In this process, we encountered a number of the objections to equivalency that have already been discussed.

[REDACTED] President of [REDACTED] commented

⁴ The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose motivation is "improving teaching and learning." See <http://www.carnegiefoundation.org/about-us/about-carnegie> (accessed November 30, 2011).

⁵ <http://www.carnegiefoundation.org/faqs> (accessed November 30, 2011).

⁶ See <http://www.suny.edu/facultysenate/TheCarnegieUnit.pdf> (accessed November 30, 2011).

thus,

“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.”

* * *

raise similar objections to those raised by

“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.

Finally, Dr. [redacted] relies on a UNESCO document. In support of his evaluation the petitioner submitted 138 pages of UNESCO materials, only two of which are relevant. The relevant language 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.

In fact, UNESCO’s publication, “The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific” 82 (2d ed. 2004) (accessed on 02/05/2014 at <http://unesdoc.unesco.org/images/0013/001388/138853E.pdf> and incorporated into the record of proceedings), provides:

Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exists a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. UGC, AICTE and AIU are developing criteria and mechanisms regarding the same.

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 (Comm’r 1988). *See also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert’s qualifications or the relevance, reliability, and probative value of the testimony). 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 those letters as to whether they support the alien’s eligibility. *See id.* at 795. USCIS may even 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 (Comm’r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg’l Comm’r 1972)). The evaluations of record little support for their determination as to the number of credits.

Given the deficiencies in the evaluations discussed above and between Dr. [REDACTED] statements and the remaining evidence of record, 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, www.aacrao.org, 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.” <http://www.aacrao.org/About-AACRAO.aspx> (accessed 02/05/2014). Its mission “is to serve and advance higher education by providing leadership in academic and enrollment services.” *Id.* According to the registration page for EDGE, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” <http://edge.aacrao.org/info.php> (accessed 01/12/2014).

Authors for EDGE are not merely expressing their personal opinions. Rather, 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.

In the section related to the Indian educational system, EDGE provides that a Bachelor of Science “represents the attainment of a level of education comparable to two to three years of university study in the United States.” It appears from the record that the beneficiary has the equivalent of three years of study in the United States. This information is inconsistent with the evaluations submitted.

We have also reviewed AACRAO’s Project for International Education Research (PIER) publications: the *P.I.E.R. World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* (1997). We note that the 1997 publication incorporates the first degree and education degree placements set forth in the 1986 publication. The *P.I.E.R. World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* at 43. As with EDGE, these publications represent conclusions vetted by a team of experts rather than the opinion of an individual.

One of the PIER publications also reveals that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. *A P.I.E.R. Workshop Report on South Asia* at 180 explicitly states that “transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year.” The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate “may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis.” This information seriously undermines the evaluations submitted, both of which attempt to assign credits hours for the beneficiary’s three-year baccalaureate that are close to or beyond the 120 credits typically required for a U.S. baccalaureate.

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal was not sufficient to establish that the beneficiary possessed the foreign equivalent of a U.S. bachelor's degree in Mathematics, Physics, and Computer Science. The AAO informed the petitioner of EDGE's conclusions in a Notice of Intent to Dismiss (NOID) dated November 15, 2013.

In response to the NOID, counsel submits the same evidence which was included in the petitioner's initial filing with the director and to the AAO on appeal. Counsel argues that the education evaluations previously submitted establish the beneficiary has the required education by a preponderance of the evidence. However, for the reasons noted above, the evaluations of Dr. [REDACTED] and Dr. [REDACTED] do not establish that the beneficiary has the equivalent of a bachelor's degree. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

Counsel asserts that USCIS has previously held that a three year degree from [REDACTED] is the equivalent of a United States bachelor's degree. USCIS, through the AAO, is not bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 44 F. Supp.2d 800, 803 (E.D. La. 2000), *affd*, 248 F.3rd 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

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. 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.
- H.5. Training: None required.
- H.6. Experience in the job offered: Yes, 24 months in the job offered.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: None.

As is discussed above, the beneficiary possesses a bachelor's degree in Mathematics, Physics, and Computer Science from [REDACTED] India, which is equivalent to three years of U.S. college or university education.

The terms of the labor certification require a four-year U.S. bachelor's degree in Mathematics, Physics, and 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(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.

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.