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

(b)(6)

U.S. Citizenship and Immigration Services

[redacted]

DATE: JAN 0 3 2014 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: Petitioner: [redacted]
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:

[redacted]

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,

Elizabeth McCormack

Ron Rosenberg
Chief, Administrative Appeals Office

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

The petitioner describes itself as an information technology and business process services (IT & BPS) business. It seeks to permanently employ the beneficiary in the United States as a systems support expert. The petitioner requests classification of the beneficiary as a 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 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 May 23, 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.

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

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

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

> Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-
>
> > (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor, and

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

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

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

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

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

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

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

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

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

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

> The Department of Labor (DOL) must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 9th Cir.1983).
>
> 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 skilled worker pursuant to section 203(b)(3)(A) of the Act, 8 U.S.C. § 1153(b)(3)(A).[3]

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

[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 had separate boxes for the professional and skilled worker classifications. In the instant case, the petitioner selected Part 2, Box f of Form I-140 for a skilled worker.

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 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(l)(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(l)(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 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 in Computer Science, engineering, Related.
H.5. Training: None required.
H.6. Experience in the job offered: None required.

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: 36 months.
H.10B Job title of acceptable alternate occupation: Data coordination and quality assurance experience.
H.14. Specific skills or other requirements: Prior experience must include testing methodologies and processes in the following environments: AS400 and IBM Mainframe including DB2. Must have experience in healthcare domain. Must have experience with QTP, Quality Center, and Share Point. Must have experience working in an onshore/offshore delivery model.

Q H.4 (cont'd): Employer will accept single degree or combination of degrees, diplomas and/or professional experience equivalent to a Bachelor's degree.

In the instant case, the labor certification states that the beneficiary possesses a professional graduate diploma in computer information systems from [redacted] in [redacted] completed in 2004.

The record contains a copy of The [redacted] Professional Examination – Results Transcript which indicates "Prof. Grad. Diploma: PASSED." The results transcript is dated August 5, 2004.

Although not listed by the beneficiary on the labor certification, the record also contains a copy of a document from [redacted] which states, "International Diploma in Computer Studies Record of Achievement." The document contains the beneficiary's name and a list of seven courses for which an examination was administered. The document does not contain a date of completion nor does it specify the dates the examinations were administered.[4] The record of achievement is not accompanied by an official diploma. Therefore, the AAO is unable to evaluate the authenticity of this document or to access its equivalent to a United States bachelor's degree or years of study in the United States.

The beneficiary set forth her credentials on the labor certification and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the labor certification eliciting information of the beneficiary's work experience, she represented the following employment experiences:

- [redacted] as a systems support expert from May 17, 2010 to the present (signed by the beneficiary on September 10, 2011) .
- [redacted] as a senior test specialist from December 1, 2009 to May 15, 2010.

[4] The date of the form for the diploma on the bottom right corner of the document is August 2001.

- as a software engineer/senior engineer QA from April 4, 2005 to November 25, 2009.
- as an associate quality engineer from May 6, 2004 to March 16, 2005.
- as a lecturer from March 28, 2000 to September 30, 2003.

The beneficiary does not provide any additional information, other than job descriptions, concerning her employment background on that form.

EMPLOYMENT LETTERS

As evidence of the beneficiary's employment experience, the petitioner submitted a copy of a letter dated October 2, 2003 from the managing director of the who stated that the beneficiary was employed by the from March 28, 2000 to September 30, 2003. The declarant also stated that the beneficiary joined the as a lecturer, and described the beneficiary's duties and responsibilities as: Visual Basic, Java, Information Technology, and Oracles. The declarant also stated that the beneficiary was a member of the Management Committee and the Academic Affairs Subcommittee, and that her duties and responsibilities included: preparation of study materials, preparation of examination papers and syllabi, and marking of examinations. The declarant further stated that the beneficiary was proficient in MS Office, Desk Top Publishing packages such as Page Maker & Corel Draw, Internet & E-mail, Information Technology, and in program languages such as Visual Basic, Java, and Oracle.

With respect to the letter, the declarant failed to specify how the beneficiary's duties and responsibilities as a lecturer, committee member, and subcommittee member, equate to the experience and specific skills requirements as stated in the labor certification. The declarant did not indicate that the beneficiary's duties and responsibilities included data coordination and quality assurance experience, and testing methodologies and processes in an AS400 and IBM Mainframe including DB2 environment. Nor did the declarant indicate that the beneficiary had experience in the healthcare domain or with QTP, Quality Center, and Share Point. The declarant did not state that the beneficiary had experience working in an onshore/offshore delivery model. Further, the declarant failed to specify in which academic department of the college the beneficiary was employed or the beneficiary's area of expertise. The declarant failed to specify the number of hours the beneficiary worked or the specific number of hours she performed duties as a lecturer, committee member and subcommittee member. Although the declarant stated that the beneficiary was employed at the college as a lecturer from March 2000 to September 2003, and that her duties and responsibilities included visual basic, java, information technology, and oracles; the beneficiary indicated on the labor certification, under penalty of perjury, and submitted a copy of her diplomas indicating that she was attending and the taking similar courses that she was lecturing about during that same period of her employment. Thus, it does not appear that her lecturing duties were full-time. In summary, the declarant has failed to identify any of the labor certification work experience requirements listed at

H.10, H.10-B, and H.14 or that such experience was full-time. Therefore, this letter cannot be used to demonstrate that the beneficiary had the necessary skills and experience as required by the labor certification.

The petitioner also submitted a copy of a letter from the general manager of [redacted] who stated that the company employed the beneficiary as an associate quality engineer from May 6, 2004 through March 16, 2005. The declarant stated that the beneficiary was given in-house training on testing concepts, methodologies, preparation of test case, GUI and report printing standards. The declarant also stated that the beneficiary underwent training on Quality Assurance, Quality Control procedures, CMM process and SQA activities, and that she played the role of SQA in a software development project. Specifically, her responsibilities included quality control and testing activities covering: functionality testing, usability testing, reliability testing, regression testing, and integration testing; SQA and quality assurance activities covering: monitor and report process compliance on project activities, collection of metrics data from projects, initiate and conduct reviews on project deliverables, project status reporting, and facilitation for causal analysis for completed phases of projects. The declarant did not indicate that the beneficiary's experience included testing methodologies and processes in an AS400 and IBM Mainframe including DB2 environment. Nor did the declarant indicate that the beneficiary had experience in the healthcare domain. The declarant failed to state that the beneficiary had experience working in an onshore/offshore delivery model. Although the beneficiary may have gained some data coordination and quality assurance experience while employed by Informatics, there is no indication that she performed the specific skills or other requirements listed at H.14 of the labor certification. The declarant failed to specify the period of time during which the beneficiary received on-the-job training and the number of hours she spent performing the duties of an associate quality engineer. Therefore, this letter cannot be used to demonstrate that the beneficiary had the necessary skills and experience as required by the labor certification.

The petitioner submitted as evidence a copy of a letter dated December 29, 2010 from the CEO of [redacted] who stated that the company employed the beneficiary as a senior test specialist from January 12, 2009 to May 15, 2010. The declarant described the beneficiary's job duties as quality assurance and control activities; performed requirements gathering, developed master test strategies, wrote test plans, managed system and regression test execution, coordinated with the business team for user acceptance testing, performed test automation using Quick Test Pro., identified formal test cases in Quality Center and created automation scripts using QTP, managed release audits, reviewed QA deliverables, collected, reviewed, and prepared metrics, and created and maintained artifacts in Share Point. The declarant did not indicate that the beneficiary's experience included testing methodologies and processes in an AS400 and IBM Mainframe including DB2 environment. Nor did the declarant indicate that the beneficiary had experience in the healthcare domain. The declarant failed to state that the beneficiary had experience working in an onshore/offshore delivery model. Therefore, while the letter establishes 16 months of experience in the alternate jobs, it does not demonstrate that the beneficiary had the necessary skills required by the labor certification at H.14.

The petitioner also submitted a copy of a letter dated January 24, 2011 from the manager of the human resources department at , who stated that the company employed the beneficiary as an associate software engineer from April 4, 2005 to April 1, 2006. The declarant stated that the beneficiary was promoted to the level of a software QA engineer which she served in the position from April 1, 2006 to April 1, 2007. The declarant further stated that from April 1, 2007 to November 25, 2009, when the beneficiary left the company, she served as a senior engineer-QA. The declarant describes the beneficiary's job duties as a senior engineer-QA to include the specialized job description components as specified on the labor certification at Part H.14. The declarant's statement demonstrates that the beneficiary's duties included those specific skills as listed on the labor certification at Part H.14, as an associate software engineer, a software QA engineer, or as a senior engineer-QA. The AAO will consider this statement as evidence of the beneficiary's relevant work experience for one year. Considering the 16 months from and the 12 months from the evidence is insufficient to demonstrate that the beneficiary had the 36 months of acceptable alternate work experience as indicated on the labor certification.

EVALUATION

The record also contains an evaluation of the beneficiary's educational credentials prepared by Professor of on March 11, 2011. The evaluation concludes that the beneficiary has attained the equivalent of a Bachelor of Science Degree in Computer Information Systems based on her academic studies and professional experience in the field of information systems. Professor stated that his evaluation is based upon an analysis of the beneficiary's employment experience as well as her completion of a Diploma in Computer Studies from , and a Professional Graduate Diploma from both in the

Professor stated that the nature of the courses completed at and and the credit hours involved indicate that the beneficiary completed the equivalent of one year of study at each institution, toward a bachelor of science degree in computer Information Systems, or a related technical computing field, from an accredited institution of higher education in the United States. Professor also stated that the beneficiary has completed no less than six years of progressively responsible qualifying work experience in computer information systems and related areas.

Professor considers the beneficiary's job experience from March 2000 to May 2010. Professor indicated that the beneficiary had completed six years of bachelor's-level employment experience in computer information systems, and related areas, characterized by increasingly advanced responsibility and complexity under the supervision of managers, and together with peers. The professor stated that his conclusions concerning the beneficiary's professional history are based upon letters of reference from her employers and a supplemental resume, and that his analysis is based solely on employment confirmed by the reference letters. Professor analyzes the beneficiary's job training and experience at

(March 2000 to September 2003), (May 2004 to March 2005), (at least August 2008 to November 2009[5]), and (December 2009 to May 2010). He further stated that using the equivalency ratio of three years of work experience for one year of college training, it was his opinion that the beneficiary completed the equivalent of two years of college-level training through six years of employment experience toward the attainment of a bachelor's degree.

The evaluation concludes that based on the reputations of and the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, as well as six years of professional training and work experience in computer information systems and related areas, the beneficiary has received the equivalent of a bachelor of Science Degree in Computer Information Systems from an accredited institution of higher education in the United States.

The evaluation is not persuasive in establishing that the beneficiary's education and work experience are equivalent to a U.S. bachelor's degree. The evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). But, there is no evidence in the recruiting materials that the petitioner would accept three years of work for one year of education.[6] As the petitioner did not state what criteria it would use to determine degree equivalency, it is impossible to calculate how many years of experience that the petitioner intended to be equivalent to an undetermined number of years of education. Thus, USCIS cannot determine that the beneficiary has adequate work experience counting toward a university education.

Further, for the same reasons stated above, in looking at whether the beneficiary has qualifying work experience, the petitioner has not established that the beneficiary has the full nine years of qualifying work experience that would be required if the AAO were to read the labor certification to allow three years of the beneficiary's work experience to equal one year of university study (six years of work experience to equal two years of university study) plus 36 months (three years) of qualified work experience in an alternate occupation as required by the petitioner at Section H.10.

The evidence relied upon by the evaluation is insufficient to conclude that the beneficiary's international diploma, completion of a professional examination, and work experience is equivalent to a U.S. bachelor's degree. Therefore, the beneficiary does not meet the terms of the labor certification which require the equivalent of a bachelor's degree and 36 months of work experience. 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

[5] The petitioner indicates on appeal that he did not consider all of the employment experience as it was not needed.

[6] The petitioner indicated in its recruitment materials that it would accept a single degree or combination of degrees, diplomas, and/or professional experience equivalent to a bachelor's degree.

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

The petitioner relies on the beneficiary's diploma from combined with the International Diploma in Computer Studies and six years of work experience for the claimed equivalency to a U.S. bachelor's degree. The combined education and work experience 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).

The record has not shown that the beneficiary's International Diploma in Computer Studies and the Professional Examination Results transcript are the foreign equivalent of a United States Bachelor's degree. As noted by the director, neither of the records show that the beneficiary was awarded a Bachelor's degree; and no dates of attendance are shown on either of the academic records.[7]

Therefore, the evidence in the record and on appeal was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in computer science, engineering, or in a related field of study.[8]

Furthermore, even if the AAO were to consider a combination of education and work experience in determining the beneficiary's academic qualifications, the employment letters submitted on behalf of the beneficiary fail to demonstrate that she possesses sufficient experience in lieu of educaion and 36 months of experience as required by the labor certification.

Counsel asserts that the ETA Form 9089 is limited and did not allow the petitioner to indicate its full intent. Counsel further asserts that although the petitioner failed to check Part H.8, its explanation that it was willing to accept a combination and experience as indicated in Part H.14 of the labor certification is sufficient to demonstrate the petitioner's intent to hire a systems support expert. Counsel also asserts that the petitioner's intent is further evidenced in the job postings and ads created in an effort to fill the position.

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[7] The record does not reflect that the is an accredited academic institution capable of bestowing college credit. Thus, while this course work at the may be considered as training, it does not count toward the beneficiary's academic study.

[8] A Bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Reg.Comm.1977).

Contrary to counsel's claims, the record is devoid of evidence to demonstrate the specific type of combination of education and work experience the petitioner was willing to accept. Furthermore, there has been no evidence submitted to demonstrate that the petitioner received resumes in response to its postings and ads. Although counsel states that the classification of skilled worker does not require that the beneficiary have a Bachelor's degree, the petitioner must establish that the beneficiary meets the minimum requirements of the labor certification which requires a bachelor's degree or the equivalent in computer science, engineering, or related field plus 36 months of experience in an alternative occupation.

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 meet the requirements of the labor certification.

As is discussed above, the labor certification requires a bachelor's degree plus 36 months of experience in an alternative occupation plus special skills. We have also reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).[9] According to the registration page for EDGE, http://aacraoedge.aacrao.org/register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials." Authors for EDGE are not merely expressing their personal opinions. Rather, they 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 *www.aacrao.org/publications/guide to creating international publications.pdf.* If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* at 11-12. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[10]

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[9] 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."

[10] 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.

EDGE's credential advice provides that a diploma of higher education from the United Kingdom is the equivalent of one year of university study in the United States; and that a postgraduate diploma from the United Kingdom is the equivalent of one year of university study in the United States.

The labor certification permits a lesser degree, a combination of lesser degrees, and/or a quantifiable amount of work experience, such as that possessed by the beneficiary.[11] As such, the Request for Evidence (RFE) issued by the director and dated September 18, 2012, 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.[12] The petitioner provided copies of the prevailing wage determination, recruitment conducted for the position, and the posted notice of the filing of the labor certification. One of the petitioner's ads read, in part:

> Seeks Systems Support Expert…responsible for data coordination & quality assurance for enterprise application in healthcare domain….Job requires bachelors degree or equiv in Comp Science, Engineering or related &3 yrs data coordination & QA exp. Prior exp must include testing methodologies & processes in the following environments: AS400

[11] 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.

[12] 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.

> & IBM Mainframe including DB2. Must have exp in healthcare domain....Must have exp w/QTP, Quality Center & SharePoint....Employer will accept single degree or combination of degrees, diplomas &/or professional experience equiv to a bachelors degree.

The evidence demonstrated that the petitioner advertised this position in its local area by requiring the education and experience noted above. The recruitment materials do not specify the criteria to demonstrate the equivalency to a bachelor's degree. The Certifying Officer granted certification based upon the petitioner's inability to locate U.S. workers who met the above noted criteria. However, the petitioner was not specific with regards to alternative degree(s), diploma(s), and experience required, e.g. that the employer would accept 3 years of work experience or training in lieu of one year of training. As the recruitment materials were themselves ambiguous, it is impossible to determine whether the beneficiary is qualified for the position. Therefore, the beneficiary does not meet the requirements of the labor certification and 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.[13] 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 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).

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[13] 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.

In the instant case, the petitioner was provided with an opportunity to establish its intent regarding its equivalency/combination language in Part H.14 on the labor certification and the minimum educational requirements of the labor certification. The petitioner failed to establish that this language was intended to mean that the required education could be met with a 3 to 1 equivalency analysis, as is allowed in the H-1B regulations.

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 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.

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.