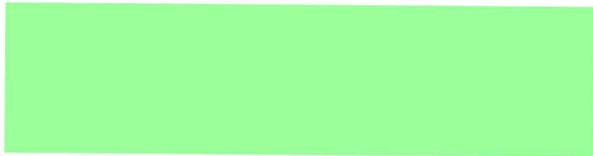




U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE:

OCT 21 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)(A)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(ii)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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 employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). The petitioner filed a motion to reopen and reconsider, which was dismissed by the Director. The petition is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

Procedural History

The petitioner is an IT security consulting company. On January 22, 2014, it filed the instant Form I-140, Immigrant Petition for Alien Worker, seeking to employ the beneficiary permanently in the United States as a senior information security analyst and to classify him 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).<sup>1</sup> Section 203(b)(A)(ii) of the Act allows preference classification to be granted to qualified immigrants who hold baccalaureate degrees and are members of the professions.

As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), which had been filed with the U.S. Department of Labor (DOL) on June 4, 2008, and certified by the DOL on January 16, 2009.<sup>2</sup> To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date.<sup>3</sup> See 8 C.F.R. § 204.5(l)(3)(ii)(B) and *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). The petitioner must also establish its continuing ability to pay the proffered wage of the job offered, which is likewise specified on the labor certification, from the priority date up to the present. See 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is June 4, 2008.

For the job at issue in this proceeding – senior information security analyst – the petitioner specified in Part H of the ETA Form 9089 the following education, training, and experience requirements:

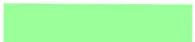
- |      |   |                                |                   |
|------|---|--------------------------------|-------------------|
| 4.   | <u>Education:</u>                                   | <u>Minimum level required:</u> | Bachelor's degree |
| 4-B. | <u>Major Field of Study:</u>                        |                                | Computer Science  |
| 5.   | <u>Is training required in the job opportunity?</u> |                                | "No"              |

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<sup>1</sup> The petitioner filed an earlier Form I-140 on behalf of the beneficiary on March 9, 2009, which sought to classify him as an advanced degree professional under section 203(b)(2) of the Act. That petition [REDACTED] was denied by the Director on May 7, 2013, and an appeal was dismissed by the AAO on February 11, 2004.

<sup>2</sup> The labor certification submitted with the instant petition is a copy of the original labor certification which was submitted with the petitioner's initial Form I-140 petition.

<sup>3</sup> The priority date of an immigrant petition is the date the underlying labor certification application was accepted for processing by the DO>. See 8 C.F.R. § 204.5(d).



- 6. Is experience in the job offered required? "Yes"
- 6A. Number of months experience required: 60 months
- 7. Is there an alternate field of study that is acceptable? "Yes"
- 7-A. Alternate field of study: Information Systems
- 8. Is there an alternate combination of education and experience that is acceptable? "Yes"
- 8-A. Alternate level of education: Master's degree
- 8-C: Years of experience required: 3 years
- 9. Is a foreign educational equivalent acceptable? "Yes"
- 10. Is experience in an alternate occupation acceptable? "Yes"
- 10-A. Number of months experience in alternate occupation required. 60 months
- 10-B. Job title of the acceptable alternate occupation: Sr. Information Systems Analyst

As evidence of the beneficiary's educational qualifications the petitioner submitted copies of the following pertinent documentation with the Form I-140:

- A diploma and transcript from [redacted] showing that the beneficiary received a Bachelor of Commerce degree in November 1996, upon the completion of a two-year program of study and the passage of the annual examination.
- A diploma and transcript from [redacted] Pakistan, showing that the beneficiary received a Master of Computer Science degree on December 18, 1999, following the completion of five semesters of coursework from the fall of 1997 through the spring of 1999.
- An evaluation of the U.S. equivalency of the beneficiary's education from [redacted] Florida, dated July 13, 2000, which asserts that the beneficiary's Bachelor of [redacted] was equivalent to two years of undergraduate study in the United States, that his Master of Computer Science from [redacted] was equivalent to five semesters of upper division undergraduate study in the United States, and that combining this education with the beneficiary's Certificate of Excellence as a [redacted] upon

completion of some computer related courses conducted by [REDACTED] resulted in the equivalent of a U.S. bachelor of science degree in computer science.

As evidence of the beneficiary's experience qualifications, the petitioner submitted a letter from [REDACTED] Virginia, dated August 29, 2013, which stated that the beneficiary worked full time for the company as a senior information security analyst from April 2003 to April 2010 and described his job duties.

As evidence of its continuing ability to pay the proffered wage (\$90,000 per year) from the priority date onward, the petitioner submitted copies of the Forms W-2 it issued to the beneficiary (who began working for the petitioner in April 2010) for the years 2010, 2011, and 2012, excerpts from its federal income tax returns (Forms 1120S) for the years 2008, 2009, and 2010, and other documentation including its expenditures for the services of the beneficiary as a consultant from [REDACTED] in the years 2008-2010.

On April 15, 2014, the Director issued a Notice of Intent to Deny (NOID) indicating that the petition did not appear to be approvable because the record did not establish that the beneficiary had the requisite education or that the petitioner had the continuing ability to pay the proffered wage. The Director indicated that the beneficiary did not have a single foreign degree that was equivalent to a U.S. baccalaureate in computer science or information systems, and that there was no evidence in the record that [REDACTED] was accredited by an official accrediting agency at the time the beneficiary's Master of Science degree was awarded in 1999. The Director requested the petitioner to submit additional evidence of its ability to pay the proffered wage in the years 2011, 2012, and 2013 – specifically, either its federal income tax returns or its annual reports or audited financial statements for each of those three years – as well as a copy of the Form W-2 issued to the beneficiary for 2013.

The petitioner responded to the NOID on May 16, 2014, with a brief from counsel and additional documentation. In the brief counsel contended that the labor certification did not require an "equivalent foreign degree" to a U.S. bachelor's degree, but rather a "foreign educational equivalent" to a U.S. bachelor's degree which the beneficiary possessed, according to counsel, in the form of his Bachelor of Commerce from [REDACTED] together with his Master of Science in Computer Science from [REDACTED]. Counsel did not address the issue of [REDACTED] lack of accreditation, or submit any evidence on that subject. As for the petitioner's ability to pay the proffered wage, counsel asserted that the documentation previously submitted with the petition, supplemented by the beneficiary's Form W-2 for 2013 and his three most recent earnings statements in 2014, was sufficient to establish the petitioner's continuing ability to pay the proffered wage from the priority date up to the present.

The Director denied the instant petition on June 4, 2014, finding that the beneficiary did not fulfill the educational requirement of the labor certification and that the petitioner failed to establish its continuing ability to pay the proffered wage. On the education issue, the Director found that the beneficiary had the equivalent of two years of lower division undergraduate study in the United

States based on his two-year Bachelor of Commerce degree from [REDACTED], but that his five semesters of computer coursework at [REDACTED] resulting in a Master of Science degree had no equivalent academic value in the United States since there was no evidence that [REDACTED] was accredited. Therefore, the Director determined that the beneficiary did not have the foreign equivalent of a U.S. bachelor's degree in computer science or information systems. The Director also determined that the petitioner failed to establish its continuing ability to pay the proffered wage from the priority date up to the present because it did not submit one of the three types of required initial evidence identified in the regulation at 8 C.F.R. § 204.5(g)(2) and requested in the NOID – namely, its federal tax returns, or annual reports, or audited financial statements – for the years 2011, 2012, and 2013.

The petitioner filed a motion to reopen and reconsider on July 3, 2014, accompanied by a brief from counsel and supporting documentation. In the brief counsel reiterated its contention that the petitioner's indication on the labor certification that it will accept a "foreign educational equivalent" to a U.S. bachelor's degree means that a single-source foreign equivalent degree is not required. Counsel repeated its claim that the beneficiary's Bachelor of Commerce from [REDACTED] in combination with his Master of Science in Computer Science from [REDACTED] is the "foreign educational equivalent" of a U.S. bachelor's degree in computer science. Once again, counsel ignored the issue of [REDACTED] lack of accreditation by an official accrediting agency in Pakistan. On the ability to pay issue, counsel pointed out that the petitioner's federal tax returns for the years 2008-2010 established its ability to pay the proffered wage in those years (either on the basis of net income or net current assets for the respective years). Counsel asserted that the Director erred in refusing to accept the beneficiary's Forms W-2 for the years 2011-2013 and earnings statements in 2014 as evidence of the petitioner's ability to pay during that time frame because these documents all show that the beneficiary's compensation from the petitioner has exceeded the proffered wage from 2011 up to the present. Nevertheless, counsel submitted copies of the petitioner's federal income tax returns (Forms 1120S) for the years 2011, 2012, and 2013 to complete the record. The returns show that for two of the three years the petitioner's net income exceeded the beneficiary's proffered wage, and that its net current assets exceeded the proffered wage in all three years.

On July 30, 2014, the Director issued a decision dismissing the motion. First, the Director found that "[t]he federal tax returns submitted with the motion to reopen and reconsider DO establish the petitioner's ability to pay" (emphasis added). Second, the Director stated that "USCIS [U.S. Citizenship and Immigration Services] is not requiring a single-source degree for this petition," but "the foreign degree must be equivalent to a degree completed at an accredited institution of higher education in the United States." The record failed to establish that the beneficiary met this educational requirement, the Director determined, because the petitioner submitted no evidence showing that [REDACTED] was accredited by an official accrediting agency in Pakistan at the time the beneficiary received his Master of Science degree in 1999. The Director stated that the beneficiary's other degree – the two-year Bachelor of Commerce from [REDACTED] – was not by itself equivalent to a U.S. bachelor's degree. Thus, the Director found that the petitioner has established its continuing ability to pay the proffered

wage, but that the petitioner has still not established that the beneficiary's educational qualifications meet the requirements of the labor certification. The Director "ordered that the motion be dismissed and the original decision denying [the] Form I-140 remain undisturbed."

On August 28, 2014, the petitioner filed a timely appeal. The appeal (Form I-290B) has been supplemented with a brief from counsel and supporting documentation. We conduct appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

Ability to Pay the Proffered Wage

The petitioner appears to have misinterpreted the Director's decision on the ability to pay issue, since on both the attachment to the Form I-290B and in the appeal brief counsel refers to the motion being dismissed and the petition being denied on two grounds, including the petitioner's failure to establish its continuing ability to pay the proffered wage. The Director specifically stated in the decision of July 30, 2014, however, that the federal tax returns submitted by the petitioner on motion "do establish the petitioner's ability to pay." That ground for denial, therefore, has been overcome by the petitioner.

Educational Requirement for the Proffered Position

The petitioner maintains that the Director "mischaracterized" the educational requirement for the job offered as a "foreign degree" equivalent to a degree from an accredited college or university in the United States, whereas the labor certification expressly indicates that the petitioner will accept a "foreign educational equivalent" of a U.S. degree (ETA Form 9089, Part H, Question 9). The petitioner concedes that [REDACTED] is not an accredited institution, and does not claim that the beneficiary's Master of Science degree from [REDACTED] is equivalent to a master's degree or a bachelor's degree from an accredited U.S. institution of higher education. Nonetheless, the petitioner claims that the beneficiary has the foreign educational equivalent of a U.S. bachelor's degree in computer science based in part on his coursework at unaccredited [REDACTED]

In considering the instant appeal, it is important to discuss the respective roles of the DOL and USCIS in the employment-based immigrant visa process. As previously noted, the labor certification in this case 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

(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 left to USCIS to determine whether the offered position and the beneficiary qualify for the requested preference classification, and whether the beneficiary satisfies the minimum requirements of the offered position as set forth on the labor certification.

There is no doubt that the authority to make preference classification decisions rests with INS.<sup>4</sup> 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).<sup>5</sup> *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 [visa category] status. That determination appears to be delegated to the INS under section 204(b),

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<sup>4</sup> INS is the former Immigration and Naturalization Service, whose functions were taken over, in part, by USCIS when the Homeland Security Act of 2002 entered into force on March 1, 2003.

<sup>5</sup> Based on revisions to the Act, the current citation is section 212(a)(5)(A).

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

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

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

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

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

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

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

At issues in this appeal are (1) whether the beneficiary possesses a U.S. bachelor’s degree or a foreign equivalent degree, (2) whether the beneficiary meets the requirements of the labor certification, and (3) whether the labor certification requires a U.S. bachelor’s degree or a foreign equivalent degree.

### **The Beneficiary Must Possess a U.S. Bachelor’s Degree or Foreign Equivalent Degree**

As indicated 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 INS (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. See *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). For the professional category, however, 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 record establishes that the beneficiary has a two-year Bachelor of Commerce degree from [REDACTED], an institution recognized by Pakistan's official accrediting agency, the [REDACTED]. A bachelor's degree in the United States, however, generally requires four years of study at a U.S. college or university. See *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Thus, the beneficiary's degree from the [REDACTED] cannot be considered a "foreign equivalent degree" to a U.S. bachelor's degree.

As another resource to assess the U.S. equivalency of the beneficiary's degree from [REDACTED] 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 foreign educational credentials.” See <http://edge.aacrao.org/info.php>. USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.<sup>6</sup>

According to EDGE, a two-year Bachelor of Commerce degree in Pakistan is comparable to two years of university study in the United States. Thus, EDGE confirms our assessment that the beneficiary’s two-year degree from [REDACTED] is not a “foreign equivalent degree” to a U.S. bachelor’s degree.

EDGE also contains information about Master of Science degrees in Pakistan, indicating that they are awarded upon completion of two years of study beyond a two- or three-year bachelor’s degree and are comparable to a bachelor’s degree in the United States. While the beneficiary was awarded a Master of Science degree from [REDACTED] in 1999, that institution has not been recognized by the [REDACTED] in Pakistan. Nor was the institution recognized, as far as the record shows, by [REDACTED] predecessor, the [REDACTED] which was Pakistan’s accrediting agency from 1947 to 2002. [REDACTED] As previously discussed by the Director, USCIS will not consider an educational credential from an unaccredited foreign institution as equivalent to a degree from an accredited institution of higher education in the United States. In any event, the petitioner is not claiming on appeal that the beneficiary’s degree from [REDACTED] is a foreign equivalent degree to a U.S. bachelor’s degree (or any other U.S. degree).

Despite [REDACTED] lack of accreditation, the petitioner asserts that the beneficiary’s five semesters of computer coursework at [REDACTED] comprise a part of his “foreign educational equivalent” to a U.S. bachelor’s degree in computer science. As explained above, however, to qualify the beneficiary for classification as a professional his coursework at [REDACTED] which post-dated his two-year degree program at [REDACTED] must have resulted in a foreign equivalent degree to a U.S. bachelor’s degree. The beneficiary’s degree from [REDACTED] does not meet the criterion of a foreign equivalent degree because the institution lacks accreditation in Pakistan. Therefore, the beneficiary’s computer coursework at [REDACTED] even though it

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<sup>6</sup> 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. v. USCIS*, 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien’s three-year bachelor’s degree was not a foreign equivalent degree to a U.S. bachelor’s degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

followed his two-year degree from an accredited university, does not qualify the beneficiary for classification as a professional under section 203(b)(3)(A)(ii) of the Act.

On appeal the petitioner has submitted an “Evaluation of Academic Qualifications and Experience” from [REDACTED] dated September 3, 2013, which assesses the U.S. educational equivalency of the beneficiary’s education and work experience. According to [REDACTED] the beneficiary’s two-year Bachelor of Commerce degree from [REDACTED] is equivalent to an Associate of Arts in Business Administration from an accredited college or university in the United States. Combining this education with the beneficiary’s many years of experience in the IT field, which included seven years with [REDACTED] from 2003 to 2010 and nearly five years with two other companies before that, [REDACTED] concludes that the beneficiary has attained the equivalent of at least a Bachelor of Science degree in Computer Information Systems from an accredited college or university in the United States.

The [REDACTED] evaluation does not conclude that the beneficiary has a foreign equivalent degree to a U.S. bachelor’s degree in computer information systems. Rather, [REDACTED] concludes that the beneficiary has the “equivalent” of a U.S. bachelor’s degree in computer information systems based on the combination of a lesser degree (the equivalent of a U.S. associate’s degree in business administration) and work experience in the IT field. Therefore, the [REDACTED] evaluation does not support the classification of the beneficiary as a professional under section 203(b)(3)(A)(ii) of the Act.<sup>7</sup>

After reviewing all of the evidence in the record, we conclude 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 Job Offered as Set Forth in the Labor Certification**

The beneficiary must meet all of the minimum requirements of the offered position as set forth in the labor certification by the priority date. In evaluating the beneficiary’s qualifications, USCIS must look to 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-*

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<sup>7</sup> The other evaluation in the record from [REDACTED], submitted with the instant petition, also fails to support the classification of the beneficiary as a professional. The [REDACTED] evaluation concludes that the beneficiary has the equivalent of a U.S. bachelor’s degree in computer science based on his two degrees from Pakistan (one of which was granted by an unaccredited institution) in combination with a “vocational/occupational credential” in computers from [REDACTED]. Like the [REDACTED] evaluation, the [REDACTED] evaluation does not conclude that the beneficiary has a foreign equivalent degree to a U.S. bachelor’s degree.

*Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by “examin[ing] 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]” even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

As stated earlier in this decision, the labor certification sets forth the following minimum requirements of education and experience for the offered position:

- A bachelor’s degree in computer science or information systems or a “foreign educational equivalent” (ETA Form 9089, Part H.4, H.4-B, H.7, H.7-A, and H.9) plus five years of experience in the job offered or a related occupation, or
- A master’s degree in computer science or information systems or a “foreign educational equivalent” (ETA Form 9089, Part 8, H.8-A, H.8-C, and H.9) plus three years of qualifying experience.

As previously discussed, the beneficiary has a two-year Bachelor of Commerce from [REDACTED] in Pakistan which we have found, consistent with the credential advice in EDGE, is comparable to two years of college or university study in the United States. The beneficiary also has a degree from an unaccredited institution in Pakistan (Master of Computer Science from [REDACTED]) which we have found is not equivalent, or comparable, to any degree from an accredited college or university in the United States. Thus, the beneficiary does not meet the minimum degree requirement specified in the labor certification.

The petitioner asserts that by indicating in the labor certification that it would accept a “foreign educational equivalent” to a bachelor’s degree, that means the beneficiary could meet the minimum educational requirement of the ETA Form 9089 with a combination of lesser educational credentials and/or work experience in Pakistan and the United States that amounts to the educational equivalent of a bachelor’s degree. This claim, however, would put the labor certification in substantive conflict with the petition. If the labor certification does 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). In this case, the petitioner indicated at Part 2.1.e. of the Form I-140 that the petition was “being filed for [a] professional (at a minimum, possessing a bachelor’s degree or a foreign degree equivalent to a U.S. bachelor’s degree).” Accordingly, the petitioner’s claim that the minimum educational requirement of the labor certification can be met with something other than a U.S. bachelor’s degree or a foreign equivalent degree has no merit.

Based on the foregoing analysis, we conclude that the petitioner has 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. For this reason as well, the petition cannot be approved.

**The Labor Certification Must Require a U.S. Bachelor's Degree or a Foreign Equivalent Degree to Support a Petition for Professional Classification**

Finally, in conjunction with its claim that the term "foreign educational equivalent" in the labor certification should not be equated with "foreign equivalent degree," and that the beneficiary has the foreign educational equivalent of a U.S. bachelor's degree with his combination of lesser educational credentials and work experience, counsel requests consideration of the instant petition under the skilled worker classification.<sup>8</sup> As previously discussed, however, the petitioner specified on the Form I-140 (Part 2.1.e.) that the instant petition was being filed for "[a] professional (at a minimum possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree)." The option of filing the petition for "[a] skilled worker (requiring at least two years of specialized training or experience)" (Part 2.1.f. of the Form I-140) was not checked. We will not consider a petition in a different visa classification once the Director has rendered a decision. A petitioner may not make material changes to a petition in an effort to conform a deficient filing to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988). Accordingly, we will not consider the instant petition in the skilled worker category.

**Conclusion**

In summation, the petitioner has failed to establish that the beneficiary possesses a U.S. bachelor's degree or a foreign equivalent degree from a college or university. The petitioner has also 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 of June 4, 2008. Therefore, the beneficiary does not qualify for classification as a professional under section 203(b)(3)(A)(ii) of the Act. Furthermore, the petitioner may not change the requested classification of the petition from professional to skilled worker to make it approvable.

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. *See* section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). That burden has not been met in this proceeding.

**ORDER:** The appeal is dismissed.

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<sup>8</sup> Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.