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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: **SEP 30 2014**

OFFICE: TEXAS SERVICE CENTER

FILE: [REDACTED]

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink that reads "Elizabeth McCormack".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a software development and consulting company. On February 26, 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 computer systems analyst and to classify him as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i).¹ As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which had been filed at the U.S. Department of Labor (DOL) on November 28, 2012, and certified by the DOL on April 17, 2013 (labor certification).²

The Director denied the instant petition on July 9, 2014, finding that the evidence of record failed to show that the beneficiary met the minimum level of education specified in the labor certification – specifically, a bachelor’s degree in one of the fields specified on the ETA Form 9089 or a foreign educational equivalent.

The petitioner filed a timely appeal on August 8, 2014. We conduct appellate review on a *de novo* basis. *See Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, 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.

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.³ *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 priority date of the instant petition is November 28, 2012. On the ETA Form 9089 the education, training, and experience requirements for the proffered position are set forth in Part H (Job Opportunity Information).

¹ The petitioner filed an earlier Form I-140 on behalf of the beneficiary on July 29, 2013, which sought to classify him as a professional under section 203(b)(3)(ii) of the Act. That petition was denied by the Director on February 13, 2014.

² 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.

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

For the job in this case – computer systems analyst – the petitioner specified the following requirements in Part H of the ETA Form 9089:

4. Education: Minimum level required: Bachelor's degree
- 4-B. Major Field of Study:
- Science, Computer Science, Management Information Systems, Information Technology, Engineering (any) "or foreign equivalent"
5. Is training required in the job opportunity? "No"
6. Is experience in the job offered required? "Yes"
- 6A. Number of months experience required: 36 months
7. Is there an alternate field of study that is acceptable? "No"
8. Is there an alternate combination of education and experience that is acceptable? "No"
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. 36 months
- 10-B. Identify the job title of the acceptable alternate occupation:
- Programmer/Analyst, Systems Analyst, Technical Consultant, Consultant

As evidence of the beneficiary's educational qualifications – all earned in India – the petitioner submitted copies of the following documentation with the Form I-140, or in response to an RFE issued by the Director:

- A diploma and transcripts from [redacted] showing that the beneficiary received a Bachelor of Science in Chemistry on December 30, 2002, based on a three-year degree program that was completed in the time period from June 1998 to April 2002.
- A series of performance statements and an honours credential from [redacted] showing that the beneficiary passed a series of examinations on computer-related subjects from January 1998 to January 2001, and was awarded an honours credential on February 28, 2001.

- An academic equivalency evaluation from [REDACTED] in [REDACTED] dated March 19, 2007, which asserts that the beneficiary's Bachelor of Science in Chemistry from [REDACTED] was equivalent to three years of undergraduate study in the United States, and that combining this education with the beneficiary's concentrated computer studies at [REDACTED] resulted in the equivalent of a bachelor's degree with a dual major in computer science and chemistry from an accredited U.S. college or university.

As evidence of the beneficiary's experience qualifications, the petitioner submitted copies of letters from previous employers attesting to the beneficiary's employment as an IT consultant at three different companies in India during the time period from September 2003 to November 2007.

In his denial decision the Director determined that the beneficiary's educational credentials did not include "a U.S. bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree" and therefore did not meet the requirements of the ETA Form 9089.

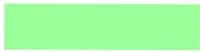
On appeal the petitioner asserts that the Director's decision was in error because the beneficiary meets the educational requirements listed on the ETA Form 9089, as well as the experience requirements, and thus qualifies for classification as a skilled worker. The petitioner also asserts that the beneficiary has a "foreign equivalent degree" which allows him to be classified as a professional under section 203(b)(3)(A)(ii) of the Act.⁴

As indicated at the outset of this decision, to be eligible for classification as a skilled worker the beneficiary must satisfy the statutory minimum requirement of two years of qualifying experience. *See* section 203(b)(3)(A)(i) of the Act. Beyond the statutory requirement, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) requires the beneficiary to have all the education, training, and experience specified on the labor certification to qualify for skilled worker classification. For the reasons discussed hereinafter we find that the record fails to establish that the beneficiary meets the educational requirement of the labor certification – specifically, a bachelor's degree or a foreign educational equivalent. Accordingly, the instant petition for skilled worker classification cannot be approved, and the Director's denial decision will be affirmed.

As previously noted, the ETA Form 9089 is certified by the DOL. It is useful, therefore, to discuss the DOL's role in the adjudicative process. Section 212(a)(5)(A)(i) of the Act provides:

In general. - 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-

⁴ Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.



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

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

It is significant that none of the above inquiries assigned to the DOL, or the remaining 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 [Immigration and Naturalization Service].⁵ 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).⁶ 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 at 1012-1013.

Relying in part on *Madany*, 696 F.2d 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

⁵ This function has been exercised by U.S. Citizenship and Immigration Services (USCIS) since the Homeland Security Act of 2002 came into force on March 1, 2003.

⁶ Based on revisions to the Act, the current citation is section 212(a)(5)(A) as set forth above.

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), 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 [visa category] status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006 at 1008. 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 certify the terms of the labor certification, but it is the responsibility of USCIS to determine if the petitioner and the alien beneficiary are eligible for the classification sought. Accordingly, the petitioner's claim on appeal that "[t]he Department of Labor has the authority . . . to define the employment requirements underlying a Labor Certification application it has approved" (section I.c. of the appeal brief) is incorrect. As previously discussed, federal appeals courts have specifically ruled that "all matters relating to preference classification eligibility not expressly delegated to DOL [*i.e.* the two section 212(a)(14) determinations] remain within INS' authority" (*Madany*, 696 F.2d at 1012-1013) and "[t]he 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" (*K.R.K. Irvine, Inc. v. Landon*, 699 F.2d at 1008).

We are cognizant of the decision in *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005), which finds 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.” Although the reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO, the analysis does not have to be followed as a matter of law. See *Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The court in *Grace Korean* makes no attempt to distinguish its holding from the Circuit Court decisions cited above. Instead, as legal support for its determination, the court cited to a case holding that the United States Postal Service has no expertise or special competence in immigration matters. *Grace Korean United Methodist Church*, 437 F. Supp. 2d at 1179 (citing *Tovar v. U.S. Postal Service*, 3 F.3d 1271, 1276 (9th Cir. 1993)). On its face, *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 and not with the delivery of mail. See section 103(a) of the Act, 8 U.S.C. § 1103(a).

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 *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *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 professional regulation, 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. 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 application form].” *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that the DOL has formally issued or otherwise attempt to divine the employer’s intentions through some sort of reverse engineering of the labor certification.

In the instant case, the employer (petitioner) stated on the ETA Form 9089 that the minimum educational requirement for the proffered position of computer systems analyst is a bachelor’s degree in one of the following fields – science, computer science, management information systems, information technology, any field of engineering, “or foreign equivalent” (Part H.4 and H.4-B) – or “a foreign educational equivalent” (Part H.9). In Part 1.a. of the appeal brief the petitioner points out that the form language at H.9 does not ask whether a foreign educational “degree” is acceptable and claims that it has “traditionally considered candidates with straight degrees and the foreign educational equivalent.” As evidence that it accepted educational credentials other than baccalaureate degrees for

the job at issue in this proceeding, the petitioner submits copies of four advertisements it placed during the labor certification process. Each one of those advertisements stated the educational (and experience) requirements as follows:

Mid Level – BS Degree with 3 Yrs of Exp. or MS Degree in Science, CS, MIS, IT, Engineering (Any) or Foreign Equivalent

Senior Level – BS Degree with 5 Yrs of Exp. or MS Degree with 2 Yrs of Exp. in Science, CS, MIS, IT, Engineering (Any) or Foreign Equivalent

The best evidence of the petitioner's intent concerning the actual minimum educational requirements of the proffered position is evidence of how it expressed those requirements to the DOL during the labor certification process and not afterwards to USCIS. The petitioner may not advertise for workers with baccalaureate degrees when recruiting before the DOL, and then before USCIS state that it would accept a foreign degree that is less than a U.S. bachelor's degree, or a combination of lesser credentials such as those possessed by the beneficiary.

The language in the advertisements does not define the term "foreign equivalent" or otherwise explain what it means. The job advertisements do not state that a combination of lesser degrees and other academic credentials, or a combination of lesser educational credentials and work experience, would be accepted by the petitioner as "a foreign equivalent" to a bachelor or master of science degree. In fact, the job advertisements are unclear as to whether the term "foreign equivalent" applies just to the educational degree portion of the advertisements, or the educational degree and experience together. With respect to the educational requirements, the only credentials mentioned in the job advertisements are bachelor's degree and master's degree. Applying the "plain language" principle of interpretation to the job advertisements, therefore, we conclude that the most logical interpretation of the term "foreign equivalent" would be a foreign equivalent degree to a U.S. baccalaureate or a U.S. master's degree.⁷

⁷ The DOL has provided the following field guidance related to this issue: when the Form ETA 750 [the old labor certification application form that was replaced by the ETA Form 9089 in 2005] indicates, for example, that a "bachelor's degree in computer science" is required, and the beneficiary has a four-year bachelor's degree in computer science from the University of Florence, "there is no requirement that the employer include 'or equivalent' after the degree requirement" on the Form ETA 750 or in its advertisement and recruitment efforts. *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). Further, where the Form ETA 750 indicates that a "U.S. bachelor's degree or the equivalent" may qualify an applicant for a position, where no specific terms are set out on the Form ETA 750 or in the employer's recruitment efforts to define the term "equivalent," "we understand [equivalent] 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). Where the Form ETA 750 indicates, for example, that work experience or a certain combination of lesser diplomas or degrees may be substituted for a

The petitioner quotes from an unpublished decision by the AAO in 2007 – on a petition for skilled worker classification involving a labor certification requiring a U.S. bachelor’s degree “or foreign equivalent” – in which the AAO determined based on job advertisements requiring a “bachelor’s degree in business or related or equivalent” that the beneficiary met the education requirement of the labor certification and was eligible for skilled worker classification. The petitioner provides no name, case number, or other identifying criteria for the decision. Thus, it is impossible to verify the contents of the decision and whether the factual and legal framework in that case parallels the instant case. Moreover, the AAO is not bound in the instant proceeding by its decision on another case in 2007. While the regulation at 8 C.F.R. § 103.3(c) provides that precedent decisions of USCIS are binding on all its employees in the administration of the Act, unpublished decisions (like the one cited by the petitioner) are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. See 8 C.F.R. § 103.0(a).⁸

As previously mentioned, the record includes an academic equivalency evaluation of the beneficiary’s education from [REDACTED]. This evaluation does not claim that the beneficiary’s three-year bachelor’s degree from [REDACTED], standing alone, is equivalent to a bachelor’s degree in the United States, the standard for which is four years of undergraduate study. See *Matter*

bachelor’s degree, “the employer must specifically state on the ETA 750, Part A, as well as throughout all phases of the recruitment, exactly what will be considered equivalent or alternative [to the degree] 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). State Employment Security Agencies (SESAs) should “request the employer provide the specifics of what is meant when the word ‘equivalent’ is used.” See Ltr. from Paul R. Nelson, Certifying Officer, U.S. Dep’t. of Labor’s Empl. & Training Administration, to Lynda Won-Chung, Esq., Jackson & Hertogs (March 9, 1993). Finally, 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.” *Id.* To our knowledge, the field guidance memoranda referenced above have not been rescinded, and are equally applicable to the new labor certification application, ETA Form 9089, which replaced the Form ETA 750 pursuant to the PERM (Program Electronic Review Management) regulations that were enacted on March 28, 2005.

⁸ The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the federal circuit court of appeals from whatever circuit that the action arose. See *N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9th Cir. 1987) (administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F.Supp. 2d 1014, 1022 (D. Haw. 2000), *aff’d*, 273 F.3d 874 (9th Cir. 2001) (unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). Even USCIS internal memoranda do not establish judicially enforceable rights. See *Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5th Cir. 2000) (An agency’s internal guidelines “neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.”)

of *Shah*, 17 I&N Dec 244 (Reg'l. Comm'r 1977). Rather, it claims that the beneficiary's three-year bachelor of science degree in chemistry together with his computer study program at [REDACTED] culminating in an [REDACTED] credential are, in sum, equivalent to a U.S. bachelor's degree with a dual major in chemistry and computer science. We do not agree. The computer program at [REDACTED] was in the nature of post-secondary vocational education. There is no evidence in the record that [REDACTED] is an accredited institution of higher learning. The record shows that the beneficiary began his computer studies at [REDACTED] before he began his degree program at [REDACTED], and that he completed his [REDACTED] studies and received his credential from [REDACTED] more than a year before he completed his degree program at [REDACTED]. Thus, the computer coursework at [REDACTED] was not a postgraduate program that built upon the beneficiary's bachelor of science degree from [REDACTED]. The [REDACTED] credential from [REDACTED] may not be combined with the beneficiary's three-year bachelor's degree from India, which [REDACTED] evaluates as equivalent to three years of study at a U.S. college or university, to attain the equivalent of a single degree from a four-year institution in the United States.

As another resource to evaluate the beneficiary's educational credentials, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁹ 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 approximately 2,600 institutions in over 40 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." 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

⁹ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota 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.

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.

EDGE's credential advice indicates that a Bachelor of Science degree in India is awarded after two to three years of tertiary study beyond the Higher Secondary Certificate (equivalent to a high school diploma in the United States), and is comparable to two to three years of university study in the United States. This information is consistent with the beneficiary's academic records from [REDACTED] showing that his Bachelor of Science in Chemistry was a three-year degree, and the Trustforte evaluation insofar as it assessed the degree as equivalent to three years of study at an accredited college or university in the United States.

As for the beneficiary's credential from [REDACTED] EDGE indicates that some "Post Graduate Diploma" (PGD) programs in India do not require any university study beforehand. They may be entered with a Higher Secondary Certificate, the equivalent of a high school diploma in the United States. That was the scenario for the beneficiary in this proceeding. The record indicates that the beneficiary completed the last examination for his Higher Secondary Certificate in March 1998, entered the [REDACTED] program shortly before that (taking his first examination in January 1998), completed the [REDACTED] program in January 2001, and received his [REDACTED] credential in February 2001. This was the same time frame in which the beneficiary was attending [REDACTED] in his three-year Bachelor of Science program. Thus, the two-year computer program at [REDACTED] did not build upon the three-year bachelor's degree. Rather, it was a parallel program that was actually completed before the beneficiary completed his bachelor's degree. Since there was no bachelor's degree requirement for entrance into the [REDACTED] program, those courses cannot be added to the beneficiary's three-year Bachelor of Science degree for the purpose of raising the beneficiary's Indian education to the equivalent of a U.S. baccalaureate degree. The beneficiary's Bachelor of Science degree from [REDACTED] and his [REDACTED] credential from [REDACTED] are not, in combination, equivalent to a U.S. bachelor's degree.

USCIS utilizes an evaluation of a person's foreign education by a credentials evaluation service as an advisory opinion only. Where an evaluation is not in accord with previously established equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). For the reasons discussed above, we conclude that the Trustforte evaluation has little probative value as evidence that the beneficiary has earned a foreign equivalent degree to a U.S. bachelor's degree in science.

The petitioner claims in section I.b. of the appeal brief that an actual degree is not required for skilled worker classification because the regulation defining skilled worker at 8 C.F.R. § 204.5(1)(2) states that "post-secondary education may be considered as training for purposes of this provision." The petitioner is correct insofar as the beneficiary's post-secondary education at [REDACTED] could be considered as training for the purpose of meeting the two years of qualifying experience required for skilled worker classification under the regulation (and the Act). However, the regulations also state that: "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 individual

labor certification.” 8 C.F.R. § 204.5(l)(3) (emphasis added). In this case, the requirements of the labor certification exceed the minimum requirement for classification as a skilled worker – *i.e.* two years of qualifying experience. The ETA Form 9089 requires a bachelor’s degree or a foreign educational equivalent. Based on the plain language of the job advertisements submitted as evidence of the petitioner’s intent during the recruitment and the labor certification process before the DOL, we have interpreted the labor certification requirement of a bachelor’s degree “or foreign equivalent” to mean a U.S. bachelor’s degree or a foreign equivalent degree. Thus, an actual degree is required by the beneficiary – not by regulation or statute, but by the terms of the labor certification.

Finally, the petitioner asserts that the beneficiary has a “foreign equivalent degree” which allows him to be classified as a professional under section 203(b)(3)(A)(ii) of the Act. Even if we were persuaded that the beneficiary’s educational credentials did amount to a “foreign equivalent degree,” we could not approve him for professional classification because the instant petition was filed for a skilled worker, not a professional. On the Form I-140 the petitioner indicated in Part 2.1.f. that the petition was being filed for a skilled worker. The option of filing the petition for a professional (Part 2.1.e) was not checked. Seeking classification as a professional at this stage of the proceeding constitutes a material change. A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm’r 1988).

For all of the reasons discussed in this decision, the AAO concludes that the beneficiary does not qualify for the proffered position of computer systems analyst because he does not have the minimum level of education specified on the ETA Form 9089 – specifically, a U.S. bachelor’s degree in science, computer science, management information systems, information technology, engineering (any field), or a foreign educational equivalent. Accordingly, the Director’s denial of the petition will be affirmed, and the instant appeal will be dismissed.

Beyond the decision of the Director, the record does not establish that the beneficiary had the requisite amount of experience to qualify for the proffered position under the terms of the labor certification or to be classified as a skilled worker under the Act. The ETA Form 9089 states that 36 months (three years) of experience in the “job offered” or in a related occupation – specifically, programmer/analyst, systems analyst, technical consultant, or consultant – was required to perform the duties of the proffered position: computer systems analyst. Under section 203(b)(3)(A)(i) of the Act at least two years of qualifying experience are required to qualify for skilled worker classification. The regulation at 8 C.F.R. § 204.5(g)(1) states the following with respect to documentary evidence:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

As evidence of the beneficiary's experience in the three previous jobs listed on the ETA Form 9089, the petitioner has submitted the following documentation:

- An "Experience Certificate" on the letterhead of [REDACTED] India, dated October 10, 2005, stating that the beneficiary was employed as a "Technical Consultant-SAP ABAP/4" from September 1, 2003 to October 10, 2005. The certificate stated that the beneficiary "worked on the Versions 4.0 as a support consultant for our various clients" and also "worked as a Core Team Member on the ongoing live implementation site on version 4.7E for our client [REDACTED]". The name and title of the person who signed the Experience Certificate cannot be determined since his (her) name is not printed on the document, the signature is illegible, and the individual is identified on the document simply as "Authorized Signatory." The Experience Certificate is supplemented by an affidavit from [REDACTED] dated December 17, 2013, who stated that he was also a technical consultant at [REDACTED] and a co-worker of the beneficiary's. Mr. [REDACTED] provided a fuller description of the job duties performed by the beneficiary.
- An undated letter from the Director of [REDACTED] India – whose name and title are not printed on the letter and whose signature is illegible – stating that the beneficiary was employed as a SAP Technical Consultant from September 21, 2005 to February 21, 2006. The job duties were described as: (a) Responsible for requirement gathering, analysis, design and development of database applications by using Sybase and Oracle forms and reports; (b) Data conversion from SAP to Oracle using ODL, XML, PL/SQL and T-SQL; (c) Responsible Unit, system and integration testing for using automated tools like Mercury and LoadRunner; (d) Creating end use business reports through Crystal reports.; (e) Web application design and development in Java, ASP, VBScript and Javascript. The letter was supplemented by a "Service Certificate cum Relieving Order" signed by [REDACTED] and dated February 21, 2006, which confirmed the beneficiary's departure from the company.
- An "Experience Certificate" on the letterhead of [REDACTED] India, signed by [REDACTED] Group Manager-Employee HR Services, and dated December 20, 2007, stating that the beneficiary was employed as a Consultant from March 1, 2006 to November 9, 2007. The letter provided no further information about the job duties performed by the beneficiary.

The first Experience Certificate, from [REDACTED] does not meet the requirements of 8 C.F.R. § 204.5(l)(3)(ii) because the name and title of the signatory cannot be determined. Furthermore, the job duties are not sufficiently described, providing little information about the work performed by the beneficiary over a period exceeding two years. The affidavit from [REDACTED] provides much more information about the beneficiary's work, but is not from the employer itself, as specified in the regulation. Thus, the evidence of record does not establish the beneficiary's claimed work experience with [REDACTED] from September 1, 2003 to October 10, 2005.

The letter from the Director of [REDACTED] provides a detailed description of the job duties performed by the beneficiary from September 21, 2005 to February 21, 2006. Though the author's name is unclear, his title is provided. We find, therefore, that the letter establishes that the beneficiary had five months of qualifying experience at [REDACTED]

The Experience Certificate from [REDACTED] does not meet the requirements of 8 C.F.R. § 204.5(1)(3)(ii) because it contains no information about the beneficiary's job duties during the period of claimed employment. Thus, the evidence of record does not establish that the beneficiary had any qualifying work experience with [REDACTED] from March 1, 2006 to November 9, 2007.

Based on the evidence of record, therefore, we find that the beneficiary has only five months of qualifying experience. Accordingly, the beneficiary does not qualify for classification as a skilled worker under the Act because he does not have the requisite two years of experience, and he does not qualify for the job offered by the petitioner under the terms of the labor certification, which requires three years of experience. For this reason as well, the petition cannot be approved.

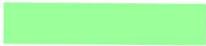
We also note from USCIS records that, in addition to the instant beneficiary, the petitioner has filed numerous other visa petitions for alien workers in recent years – both for permanent employees (Form I-140) and for temporary workers (Form I-129). The petitioner must demonstrate its ability to pay the proffered wage not only of the instant beneficiary, but of every other I-140 beneficiary from the priority date of the instant petition until the other beneficiaries obtain permanent residence. *See* 8 C.F.R. § 204.5(g)(2); *see also Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977). In any future proceedings, therefore, the petitioner may be required to provide information on the status of each I-140 petition it filed for other alien beneficiaries – including the offered wage, the priority date of every I-140 beneficiary, if and when the beneficiaries began working for the petitioner, if and when these employees ceased working for the petitioner, and the current immigration status of each beneficiary (*i.e.*, whether or not he or she obtained legal permanent residence in the United States and the date legal residence was established).

Conclusion

The petitioner has failed to establish that the beneficiary has the minimum level of education specified on the labor certification to qualify for the proffered position.

The petitioner has also failed to establish that the beneficiary has the minimum amount of experience specified on the labor certification to qualify for the proffered position, and the minimum amount of experience to qualify for skilled worker classification under section 203(b)(3)(A)(i) of the Act.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved. Accordingly, the appeal will be dismissed.



The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed. The petition remains denied.