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

(b)(6)

DATE: JUN 13 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (director), denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a business consulting and technology services business. It seeks to employ the beneficiary permanently in the United States as a technical architect. As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.[1] Upon reviewing the petition, the director determined that the petitioner failed to demonstrate that the beneficiary possessed the minimum level of education stated on the labor certification.

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.[2]

In pertinent part, section 203(b)(2) of the the Immigration and Nationality Act (the Act) provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

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. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted for processing on September 4, 2008.[3] The Immigrant Petition for Alien Worker (Form I-140) was filed on September 30, 2009.

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[1] On March 28, 2005, pursuant to 20 C.F.R. § 656.17, the Application for Permanent Employment Certification, ETA Form 9089 replaced the Application for Alien Employment Certification, Form ETA 750. The new Form ETA 9089 was introduced in connection with the re-engineered permanent foreign labor certification program (PERM), which was published in the Federal Register on December 27, 2004 with an effective date of March 28, 2005. *See* 69 Fed. Reg. 77326 (Dec. 27, 2004).

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

[3] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

In evaluating the beneficiary's qualifications, the United States Citizenship and Immigration Service (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-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 DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The proffered position's requirements are found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole. The instructions for the ETA Form 9089, Part H, provide:

> ***Minimum Education, Training, and Experience Required to Perform the Job Duties.*** Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

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.
H.5. Training: None required.
H.6. Experience in the job offered: 60 months.
H.7. Alternate field of study: Related field.
H.8. Alternate combination of education and experience: None accepted.
H.9. Foreign educational equivalent: Accepted.
H.10. Experience in an alternate occupation: 60 months of related experience in software development.
H.14. Specific skills or other requirements: Any suitable combination of education, training or

experience is acceptable. Experience must be progressively more responsible.
As noted above, the ETA Form 9089 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman,* 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) as amended in 1976. At that time, this section provided:

> Visas shall next be made available . . . to qualified immigrants who are members of the professions . . . .

The Act added section 203(b)(2)(A) of the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

> Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . .

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions." H.R. Conf. Rep. No. 955, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at *6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien "must have a bachelor's degree" when considering equivalency for second preference immigrant visas. We must assume that Congress was aware of the agency's previous treatment of a "bachelor's degree" under the Act when the new classification was enacted and did not intend to alter the agency's interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580-81 (1978) (Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor's degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (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:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both 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 (Nov. 29, 1991) (emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree (plus the requisite five years of progressive experience in the specialty). More specifically, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."[4] In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree (plus the requisite five years of progressive experience in the specialty). 8 C.F.R. § 204.5(k)(2).

For this classification, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree" (plus evidence of five years of progressive experience in the specialty). For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) 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." We cannot conclude that the evidence required to demonstrate that an alien is an advanced degree

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[4] *Compare* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) (defining for purposes of a nonimmigrant visa classification, the "equivalence to completion of a college degree" as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent degree." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991). *Compare* 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of "an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, *school or other institution of learning* relating to the area of exceptional ability").

In the instant case, the labor certification states that the beneficiary possesses a master's degree in business administration from the in India, completed in 1995. The record contains a copy of the beneficiary's Bachelor of Commerce degree and transcripts from the , a copy of the beneficiary's Master of Commerce degree and transcripts from the , and a copy of the beneficiary's master's diploma in software engineering and transcripts from

The record also contains five evaluations of the beneficiary's educational credentials. First is an evaluation from for dated August 18, 2008. concludes that the beneficiary's Master of Commerce degree from the is equivalent to a Bachelor of Business Administration degree from an accredited institution of higher education in the United States.

Second, the petitioner submitted an evaluation from for the , dated August 14, 2009. states that the beneficiary "completed a total of more than seven years of progressive post-secondary education and attained the equivalent of a four-year Bachelor of Science Degree in Computer Science from an accredited U.S. college or university based on the single source of the post-graduate Master's Diploma program completed by the candidate at "

Third, the petitioner submitted an evaluation from for dated September 10, 2009. states that the beneficiary has attained the equivalent of a Bachelor Degree in Computer Science from a regionally accredited college or university in the United States. evaluation is based only on the beneficiary's three-year bachelor of commerce degree and the statement that "In the expert opinion supplied, has established that in their professional opinion, a functional equivalency can be maintained between [the student's] Bachelor of Commerce Degree and a U.S. Degree in Computer Science." Neither nor the report from discuss how the beneficiary's bachelor of commerce degree can be equated to a bachelor of computer science when the bachelor of commerce degree did not include a single computer related course. Furthermore, assertion that the three-year degree alone can be considered equivalent to a U.S. bachelor's degree relies on a flawed interpretation of the Carnegie unit and UNESCO recommendations.

However, the record contains no evidence that the Carnegie Unit is a useful way to evaluate Indian degrees. Moreover, the petitioner has not demonstrated that the use of this system produces consistent results, as would be expected of a workable system. The Carnegie Unit was adopted by the Carnegie Foundation for the Advancement of Teaching in the early 1900s as a measure of the amount of classroom time that a high school student studied a subject.[5] For example, 120 hours of classroom time was determined to be equal to one "unit" of high school credit, and 14 "units" were deemed to constitute the minimum amount of classroom time equivalent to four years of high school.[6] This unit system was adopted at a time when high schools lacked uniformity in the courses they taught and the number of hours students spent in class. The Carnegie Unit does not apply to higher education.[7]

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

Furthermore, UNESCO recommendation relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for inclusion in a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue. In fact, UNESCO's publication, "The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific" 82 (2ded.2004) (accessed on June 10, 2013 at http://unesdoc.unesco.org/images/0013/001388/138853E.pdf and incorporated into the record of proceedings), provides:

> Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions

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[5] The Carnegie Foundation for the Advancement of Teaching was founded in 1905 as an independent policy and research center whose motivation is "improving teaching and learning." *See* http://www.carnegiefoundation.org/about-us/about-carnegie (accessed June 10, 2013).

[6] http://www.carnegiefoundation.org/faqs (accessed June 10, 2013).

[7] *See* http://www.suny.edu/facultysenate/TheCarnegieUnit.pdf (accessed June 10, 2013).

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

The petitioner also submitted an evaluation from for the dated September 10, 2009. states that the beneficiary has the equivalent of a bachelor's degree in computer science, representing 120 semester credit hours from an institution of postsecondary education in the United States of America. He bases his conclusion on interpretation of the Carnegie unit and UNESCO recommendations, as discussed above, and on the fact that it is possible to gain a master's degree in computer science from a U.S. university or college without having majored in computer science at the undergraduate level. The admissions policies of the universities noted in the evaluation in no way claim to establish an equivalency between a bachelor of commerce degree and a bachelor of computer science. Furthermore, as noted above, the beneficiary does not possess the equivalent to a U.S. bachelor's degree and his three-year bachelor of commerce program did not include a single computer science related course. Therefore, the evidence submitted does not support assertion that the beneficiary's bachelor of commerce degree is equivalent to a U.S. bachelor's degree in computer sciences.

Finally, the petitioner submitted an evaluation from for dated February 24, 2010. concludes that the beneficiary's master's diploma program in the field of computer science at computer education is equivalent, standing-alone, to a Bachelor of Science degree with a major in computer science.

The submitted evaluations reach varied conclusions concerning the beneficiary's education. It is the petitioner's responsibility to resolve to resolve any inconsistencies, including those presented by the submitted credential evaluations, in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988).

The AAO has 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. 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.[8] If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers EDGE to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.[9]

According to EDGE, a three-year Bachelor of Commerce degree from India is comparable to "three years of university study in the United States." EDGE also states that a Master of Commerce degree from India is comparable to a bachelor's degree in the United States. EDGE further discusses postgraduate diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate degree. EDGE states that a postgraduate diploma following a two-year bachelor's degree represents attainment of a level of education comparable to one year of university study in the United States. EDGE also states that a postgraduate diploma following a three-year bachelor's degree represents attainment of a level of education comparable to a bachelor's degree in the United States. However, the "Advice to Author Notes" section states:

> Postgraduate Diplomas (PGDs) should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the PGD, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

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

[9] 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.

The evidence in the record on appeal did not establish that the beneficiary's postgraduate diploma was issued by an accredited university or institution approved by AICTE or the Department of Electronics Accreditation of Computer Courses (DOEACC), that a two- or three-year bachelor's degree was required for admission into the program of study, or that is a college of university as required for classification as an advanced degree professional. The website does not shed any light on the master's diploma requirements, in fact, at present the website does not indicate that offers any master's diploma programs.

Therefore, based on the conclusions of EDGE, the evidence in the record on appeal was not sufficient to establish that the beneficiary possesses the foreign equivalent of a U.S. bachelor's degree in computer science from a college or university. The AAO informed the petitioner of EDGE's conclusions in a Request for Evidence (RFE) dated December 10, 2012. Specifically, the AAO requested that the petitioner provide documentary evidence that the Santa Cruz campus of was DOEACC or AICTE accredited, that the master's diploma in software engineering required a two or three year bachelors' degree for admission and that is a college or university. The AAO specifically indicated that additional credential evaluations submitted in response to the RFE should address the conclusions of EDGE.

In response to the RFE, counsel resubmits the evaluation from which states that "Admission requirements to the Master's Diploma Program offered by is based on prior completion to bachelor's level studies." However, there is no evidence to corroborate this statement. The petitioner has failed to submit documents from which indicate the entrance requirements for the master's diploma in software engineering. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)). Mr. goes on to state that is accredited by the DOEACC, however he fails to identify the source of his information or to specifically address the accreditation of the Santa Cruz Center where the beneficiary earned his diploma.

also notes that is a private institution with classes that may be comparable to those offered by a college or university; however, in no way indicates that is a recognized college or university as is required by the regulations. Furthermore, it is unclear from evaluation whether or not he considers the master's diploma to be a post-graduate diploma preceded by the beneficiary's three year bachelor of commerce degree which represents completion of at least one year of additional university study, as indicated on page three or if he consider the master's diploma to be the equivalent to a U.S. bachelor's degree in computer science on its own, as indicated on page four. It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. at 591.

Alternatively, counsel submits a follow-up letter from dated December 21, 2012, addressing the AAO's concerns. asserts that the beneficiary's master's diploma in software engineering alone is equivalent to a U.S. bachelor's degree in computer science. submits the PIER report which states that a master's diploma in computer science from is a "B" level program and therefore equivalent to a U.S. bachelor's degree. The PIER report submitted states that a master's diploma in computer science is a "B" level program as accredited by the DOEACC. However, fails to state how the beneficiary's master's diploma in software engineering compares to a master's diploma in computer science. According to the PIER report, the master's diploma in computer applications requires either completion of a DOEACC level "A" course, a PGD in computer applications or a post-polytechnic diploma in computer applications. The beneficiary does not possess any of the prerequisites listed in the PIER report and therefore it is unclear that the master's diploma in computer science discussed in the PIER report is the same or similar program to the master's diploma in software engineering that the beneficiary possesses. As such, contrary to assertions, the PIER report does not establish that the beneficiary possesses a DOEACC accredited level "B" credential that can be considered a level of education comparable to a U.S. bachelor's degree.

also contends that has the required DOEACC accreditation. With his original evaluation, submitted a list from the DOEACC website showing that some centers were accredited by the DOEACC. claims that because some centers are accredited by the DOEACC, we must assume accreditation for all centers. According to publically available information, is made up of franchisees running independent educational centers that offer a myriad of programs including corporate and business training and stand-alone technology and software classes. We note that of the five centers listed on the DOEACC website shown to be affiliated with , none were the Santa Cruz center and only one was accredited for "B" level programs. If all centers were accredited by the DOEACC, each center would be listed. Without information on the requirements and accreditation of the program the beneficiary actually attended we cannot give weight to the diploma submitted or concur with the evaluations. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. at 165. Furthermore, does not provide any evidence that is a college or university, instead stating that it is a recognized institution. Therefore, the AAO concludes the beneficiary's diploma from was not issued by a DOEACC or AICTE accredited program and the diploma from cannot be considered to be from a college or university.

Alternatively, counsel asserts for the first time, that the beneficiary's bachelor's degree in commerce and master's degree in commerce should be considered equivalent to a U.S. bachelor's degree of business administration. Counsel goes on to state that the field of business administration is related to the job offered and therefore fulfills the alternative educational requirements of the proffered positions. According to EDGE, a three-year Bachelor of Commerce degree followed by a two year Master of Commerce degree from a college or university, is equivalent to a U.S. Bachelor's degree.

However, the labor certification requires a degree in computer science or a related field. At issue is whether or not commerce is a field related to computer science.

In response to the RFE, counsel asserts that the petitioner routinely hires individuals with business education for information technology positions and that the proffered position has an established business component. However, the petitioner has not demonstrated the relationship between computer science and business coursework at the university level. Examining the beneficiary's transcripts, it is clear that his bachelor's and master's degrees in commerce did not include any courses related to computer science. The AAO is not persuaded business administration is in a field of study that is related to computer science. Therefore, the beneficiary does not meet the terms of the labor certification using these credentials.

After reviewing all of the evidence in the record, the petitioner has failed to overcome the conclusions of EDGE with reliable, peer-reviewed information. Therefore, the AAO concludes that the petitioner has not established that the beneficiary has the equivalent of a U.S. bachelor's degree in computer science from a college or university, as required by the terms of the labor certification and for classification as an advanced degree professional

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

ORDER: The appeal is dismissed.