U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 02 2010

LIN 06 183 52103

IN RE: Petitioner: [redacted]
Beneficiary:

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

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, 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 Taco Bell franchisee restaurant. It seeks to employ the beneficiary permanently in the United States as a manager. As required by statute, a Form ETA 750,[1] Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, on March 16, 2007, the director determined that the beneficiary did not possess a U.S. bachelor's degree or a foreign equivalent degree.

On appeal, the petitioner, through counsel, submits additional evidence and asserts that the beneficiary has the required educational credentials and meets the qualifications set forth in the approved labor certification.[2]

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp., NTSB,* 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989).

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

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. 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* 8 C.F.R. § 103.2(b)(1), (12). *See also Matter of Wing's Tea House,* 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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[1] After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

[2] The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The priority date for the instant petition is April 25, 2001. The petitioner filed the Immigrant Petition for Alien Worker (Form I-140) on June 7, 2006.

The director's denial was based on his conclusion that the beneficiary's three-year diploma from the National Council for Hotel Management and Catering Technology in New Delhi, India and other certificates did not constitute a foreign equivalent baccalaureate degree to a four-year U.S. Bachelor of Science degree in hotel/hospitality management as required by the labor certification.

The job qualifications for the certified position of manager are found on Form ETA 750 Part A. Item 13 describes the job duties to be performed as follows:

> Oversee all operations of restaurant. Coordinate food service activities, estimate food costs and requisitions, purchase supplies. Confer with food preparation and other personnel to plan menus and related activities, direct hiring and assignment of personnel. Investigate and resolve food quality and service complaints. Review financial transactions and monitor budget to ensure efficient operation, and to ensure expenditures stay within budget limitations.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education (number of years)

Grade school	8
High school	4
College	4
College Degree Required	B.S.
Major Field of Study	Hotel/Hospitality Management

Training (none listed)

Experience:

Job Offered	2 yrs.
(or)	
Related Occupation	2 yrs. Kitchen Manager or Chef

Block 15:
Other Special Requirements Good Interpersonal and Leadership Skills

As set forth on the ETA 750, the minimum requirements for the proffered position are four years of college culminating in a Bachelor of Science degree in hotel/hospitality management and two years of experience in the job offered of manager or two years of experience as a kitchen manager or chef.

As claimed by the beneficiary on Part B of the ETA 750, he possesses a three-year diploma in hotel management from the National Council for Hotel Management & Catering Technology, New Delhi, India and a one-year certificate in professional cooking from the Baltimore International College, Baltimore, Maryland.

As shown on the ETA 750, the DOL assigned the occupational code and title of 185.137-010, manager, fast food. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database[3] and the most analogous job to the certified position of manager, the position falls within Job Zone Three requiring "medium preparation" for the occupation type closest to the proffered position. According to DOL, previous work-related skill, knowledge, or experience is required for these occupations. DOL assigns a standard vocational preparation (SVP) range of 6.0 to < 7.0 to the occupation, which means "[m]ost occupations in this zone require training in vocational schools, related on-the-job experience, or an associate's degree.[4] Additionally, relevant to the overall training and experience of these occupations, DOL states that the employees in these occupations usually need one or two years of training involving both on-the-job experience and informal training with experienced workers.

Based on both the stated minimum requirements described on the ETA 750 and the standardized occupational requirements as set forth above, the position will be considered under both the professional category and the skilled worker category. It is noted that while the skilled worker classification minimum requirements do not require that an applicant possess a baccalaureate degree to be classified as a skilled worker, the beneficiary must still meet the terms set forth on the labor certification. 8 C.F.R. § 204.5(l)(3)(B).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

> 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

[3] http://online.onetcenter.org/link/summary/ 11-9051.00 (accessed 01/11/10).
[4] http://online.onetcenter.org/link/summary/11-9051.00(accessed 01/11/10).

> official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

The regulation at 8 C.F.R. 204(5)(l)(3)(ii)(B) states the following:

> 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, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The above regulation requires that the alien meet the requirements of the labor certification.

As noted above, the Form ETA 750 in this matter is certified by DOL. Thus, at the outset, it is useful to discuss DOL's role in this 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-
>
> (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 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. 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).[5] Id. at 423. The necessary result of these two grants of authority is that section 212(a)(14) determinations are not subject to review by INS absent fraud or willful misrepresentation, but all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority.
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> Given the language of the Act, the totality of the legislative history, and the agencies' own interpretations of their duties under the Act, we must conclude that Congress did not intend DOL to have primary authority to make any determinations other than the two stated in section 212(a)(14). If DOL is to analyze alien qualifications, it is for the purpose of "matching" them with those of corresponding United States workers so that it will then be "in a position to meet the requirement of the law," namely the section 212(a)(14) determinations.

Madany v. Smith, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

Relying in part on *Madany*, 696 F.2d at 1008, the Ninth circuit stated:

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

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

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

(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 DOL's responsibility to certify the terms of the labor certification, but it is the responsibility of U.S. Citizenship and Immigration Services (USCIS) to determine if the petition and the alien beneficiary are eligible for the classification sought. For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that the alien had a U.S. baccalaureate degree or a foreign equivalent degree and be a member of the professions. Additionally, the regulation 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." (Emphasis added.)

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: "[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).

Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word "degree" in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289m 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement in of a "degree" for members of the professions is deliberate. Significantly, 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) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate "degree" and be a member of the professions reveals that a member of the professions must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential. Thus, even if we did not require "a" degree that is the foreign equivalent of a U.S. baccalaureate degree, we would not consider education earned at an institution other than a college or university.

The record of proceeding contains the following documentation related to the beneficiary's education:

1. A copy of a diploma and mark sheets from the National Council for Hotel Management & Catering Technology, New Delhi, India indicating that the beneficiary completed a three-year program (1992-1995) in industrial training.
2. A copy of a certificate from the Baltimore International College, Baltimore, Maryland, dated March 21, 1997, indicating that the beneficiary completed a 25 hour course in food service sanitation management.
3. A copy of a Baltimore International College certificate, dated June 14, 1998, reflecting that the beneficiary received a certificate in professional cooking representing the completion of a program in December 1997. A letter, dated November 16, 2009, from the registrar of Baltimore International College, indicates that the beneficiary's actual dates of attendance was from January 15, 1997 until December 19, 1997 as claimed on his Form I-20, an immigration form that shows status for academic and language students. This form is signed by the director of student financial planning and also indicates that the beneficiary is seeking a level of education described as a professional certificate.
4. A copy of a certificate from the American Culinary Federation, Inc. indicating that the beneficiary was accepted as a junior member as of August 8, 1997.

With regard to the beneficiary's training, the record contains:

1. A copy of a certificate of attendance from the Manpower Development Centre in New Delhi, India indicating that the beneficiary received industrial training in the PO, HK, F&B and Kitchen departments of the Ashok Hotel from October 18, 1993 to March 2, 1994.
2. A certificate dated November 19, 1993 reflecting that the beneficiary received some unspecified training from October 2, 1993 to November 11, 1993 from the Oberoi Bogmalo Beach [sic] in Bogmalo, Goa, India.
3. A letter from the Mughal Sheraton dated June 1993, with illegible signatures of the personnel and training manager, stating that the beneficiary had received vocation training from May 3, 1993 to June 2, 1993 in food and beverage (service and production).

Relevant to the beneficiary's required two years of employment experience obtained as of the priority date of April 25, 2001, the AAO stated in its request for evidence dated October 5, 2009, that the record failed to demonstrate that the beneficiary had the required two years of

experience. Specifically, the AAO's request for evidence noted that the record contained a letter dated June 9, 2000 from [redacted], of Bethesda, Maryland. It states that the beneficiary was employed with his organization from March 15, 1999 to June 9, 2000 as an operational manager. As advised by the AAO in the request for evidence, the letter failed to describe the beneficiary's duties or whether the job was full-time (at least 40 hours per week) or part-time. In response to the request for evidence, the petitioner provided a copy of a confirmation letter that was dated March 8, 1999, affirming the beneficiary's appointment as a full-time operations manager. This letter confirms that the beneficiary acquired approximately 14 months of work experience in this job.

The other letter contained in the record is dated December 1, 1998, and is signed by [redacted] of the Country Inn in New Delhi. This letter describes the beneficiary's affiliation with this hotel from June 1994 to December 1996. It states that after his tenure as a management trainee from June 1994 to July 1995, he was promoted to resident manager at the Musssoore Hotel where he managed the entire hotel operation including the food and beverage department. The letter does not specifically describe whether these duties were full-time or part-time and does not specify the dates that the beneficiary was a resident manager. A copy of a letter signed by [redacted] dated July 2, 1995, submitted in response to the request for evidence confirms that the beneficiary's promotion to resident manager was for a full-time position and commenced in July 1995. Based on this information, the beneficiary apparently spent approximately 18 months as an operations manager in this job, or from July 1995 to December 1996. Together with the experience obtained at Silco Enterprises, the beneficiary obtained the required two years of employment experience as a manager as specified in the ETA 750.[6]

It is noted that the petitioner provided three evaluations discussing the beneficiary's education, training and experience. An evaluation from [redacted] of The Trustforte Corporation, dated December 7, 1998 refers to the beneficiary's diploma from the National Council for Hotel Management & Catering Technology as representing the U.S. equivalent of three years of studies toward a Bachelor of Science degree in hotel and restaurant management. He determines that the beneficiary's studies at the Baltimore International College represents one year of practical training in the field of hotel and restaurant management and concludes that these endeavors combined with the beneficiary's work experience from June 1994 through December 1996 represents the U.S. equivalent of a bachelor of science degree in hotel and restaurant management.[7] As noted by the director, a formulation equating a specified quantity of experience such as the formula of three years of experience for one year of education, which applies to non-immigrant H-1B petitions, is not applicable to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(*5*). Four years of college and a bachelor's degree is required on the Form

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[6] However, the petitioner may not then rely on the Trustforte evaluation as set forth below.

[7] The petitioner relies on this experience to meet the two year experience requirement. The experience cannot be counted twice to meet both the experience and the education requirement, as the Trustforte evaluation relies on this same experience to reach its bachelor's equivalency determination.

ETA 750 in the instant matter. The petitioner did not specify on the ETA 750 that the educational requirement could be met through a combination of education and/or experience.

An evaluation from [redacted] dated April 29, 2007 was been provided on appeal. [redacted] refers to the beneficiary's three-year diploma from the National Council for Hotel Management & Catering Technology combined with the certificate in Professional Cooking from the Baltimore International College as representing the U.S. equivalent of a bachelor's degree in hotel management and catering technology or related field.

An additional evaluation from the Education & Experience Evaluation Services, dated April 27, 2007 was provided on appeal. It is authored by [redacted] He also reaches the same conclusion as [redacted] in determining that the combination of the beneficiary's diploma from the National Council for Hotel Management & Catering Technology combined with the certificate course in Professional Cooking from the Baltimore International College represents the U.S. equivalent of a bachelor's degree in hotel management and catering technology or related field.

As the record stands, we do not find any of the evaluations or other evidence probative of the beneficiary's acquisition of four years of college culminating in a U.S. Bachelor of Science degree in hotel/hospitality management or a foreign equivalent degree. None of the documents submitted to the record reflect that the beneficiary has ever been awarded a baccalaureate degree of any kind either in India or in the United States. It is noted that both [redacted] and [redacted] characterization of the beneficiary's program at the Baltimore International College as a two-year baccalaureate level course is not supported by the Trustforte evaluation or by the beneficiary. The Trustforte evaluation refers to this course of study as representing one-year of practical training. The I-20 submitted by the school itself indicates that it is a professional certificate course. In this specific determination, the AAO concurs. On Part B of the ETA 750, the beneficiary describes it as a one-year certificate. Counsel's assertion that [redacted] and [redacted] evaluations should simply be accepted as contained in the petitioner's response to the AAO's request for evidence is not persuasive. 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. 582, 591-592 (BIA 1988). USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). We note that the beneficiary's three-year diploma in hotel management from the National Council for Hotel Management and Catering Technology is described in the *P.I.E.R. World Education Series India: A Special Report on the Higher Education System and Guide to the Placement of Students in Educational Institutions in the United States, 50 (1997).* This publication is sponsored by AACRAO and represents conclusions vetted by a team of experts. It indicates that the beneficiary's diploma is based on the completion of class/grade XII and gives access in India to employment. It also states that it

"may be considered for undergraduate transfer credit determined through a course-by-course analysis," based on a careful review of the syllabus. In this case, neither this diploma, representing the beneficiary's three-year program of study industrial training (hotel management) completed in 1995, or the subsequent one year certificate in professional cooking from the Baltimore International College completed in 1997, represents either alone or in combination, a four-year single-source Bachelor of Science degree in hotel/hospitality management issued by an accredited college or university as required by the terms of the labor certification.

In this case, there is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, the beneficiary's diploma from the National Council for Hotel Management & Catering Technology will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of baccalaureate education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). 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 single-source "foreign equivalent degree." In order to have experience and education equating to a bachelor's degree under section 203(b)(3)(A)(ii) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. The petitioner failed to state that it would accept any alternative combinations of education and/or experience on the labor certification and did not define any equivalency to a bachelor's degree on the labor certification.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," from a college or university in the required field of study listed on the certified labor certification, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required on the certified labor certification.

We are cognizant of the recent decision in *Grace Korean United Methodist Church v. Michael Chertoff,* 437 F. Supp. 2d 1174 (D. Or. 2005), which finds that U.S. Citizenship and Immigration Services (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." In contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in matters arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). 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. *Id.* at 719. 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).

Additionally, we also note the recent decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006). In that case, the labor certification application specified an educational requirement of four years of college and a 'B.S. or foreign equivalent.' The district court determined that 'B.S. or foreign equivalent' relates solely to the alien's educational background, precluding consideration of the alien's combined education and work experience. *Snapnames.com, Inc.* at *11-13. Additionally, the court determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the USCIS properly concluded that a single foreign degree or its equivalent is required. *Snapnames.com, Inc.* at *17, 19.

In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the Form ETA 750 and does not include alternatives to a four-year bachelor's degree. The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." *Id. See also Maramjaya v. USCIS,* Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree). In this matter, the Form ETA 750 does not specify an equivalency to the requirement of a Bachelor of Science degree in hotel/hospitality management.

Here, the beneficiary's three-year diploma in hotel management from the National Council for Hotel Management and Catering Technology is described in the *P.I.E.R. World Education Series India: A Special Report on the Higher Education System and Guide to the Placement of Students in Educational Institutions in the United States, 50 (1997).* As with EDGE, this publication is sponsored by AACRAO and represents conclusions vetted by a team of experts. It indicates that the beneficiary's diploma is based on the completion of class/grade XII and gives access in India to employment. It also states that it "may be considered for undergraduate transfer credit determined through a course-by-course analysis," based on a careful review of the syllabus. It is not, however, a four-year single-source bachelor's degree issued by an accredited college or university to meet the terms of the labor certification.

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree. More specifically, a three-year diploma in hotel management will not be considered to be the

"foreign equivalent degree" to a United States baccalaureate degree. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent baccalaureate degree," he may not qualify as a professional under section 203(b)(3)(A)(ii) of the Act as he does not have the minimum level of education required for the foreign equivalent of a bachelor's degree.

The beneficiary is also not eligible for qualification as a skilled worker under section 203(b)(3)(A)(i) of the Act. For this qualification, a beneficiary must meet the petitioner's requirements as stated on the labor certification in accordance with 8 C.F.R. § 204.5(l)(3)(ii)(B), which provides that:

> *Skilled Workers.* 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, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

In this case, even considering the petition under the skilled worker category, the beneficiary would not meet the requirements set forth on the ETA 750. The petitioner specified that four years of college culminating in a Bachelor of Science degree in hotel/hospitality management is required. No equivalency is indicated on the ETA 750. As discussed above, the beneficiary's diploma in hotel management is concluded to represent at most, some unspecified amount of undergraduate transfer credit determined on a course-by-course basis. Additionally, his subsequent one-year certificate course in professional cooking in the United States does not represent either a Bachelor of Science degree or sequential baccalaureate level studies.

Moreover, the AAO's request for evidence asked for documentation of the petitioner's recruitment efforts conducted pursuant to the labor certification proceedings in order to determine whether its intent to accept some other defined equivalency may have been communicated to DOL and to other job applicants including U.S. applicants. It is not clear from the response that this intent was clearly communicated although it is noted that one resume did not mention any formal education, three applicants mentioned that they had associate's degrees and three stated that they had bachelor's degrees. Three copies of job advertisements, which appeared in *The Baltimore Sun* were further provided in response to the AAO's request for evidence. They described the educational and experience requirements for the certified job as a "B.S. in Hotel/Hospitality Management. 2 yrs experience." A copy of an internal posting also stated the job requirements as a "B.S. in Hotel/Hospitality Management" and "2 years experience."[8] Acceptable experience in a related occupation as set forth on the ETA 750 was not included in any of the advertisements, nor did the petitioner discuss any defined educational

[8] Experience in a related occupation was not part of the advertisements.

equivalency to a four-year Bachelor of Science degree in hotel/hospitality management in the newspaper advertisements or the internal job posting.

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 petition's beneficiary must demonstrate in order 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.

In this matter, it may not be concluded that the beneficiary possesses the requisite four-year Bachelor of Science degree in hospitality management or a foreign equivalent Bachelor of Science degree.[9] No specific equivalency of the proffered position's educational requirements was set forth on the ETA 750 or communicated to U.S. workers as part of the petitioner's recruitment efforts.

Because the beneficiary does not meet the job requirements as stated on the ETA Form 750 labor

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[9] DOL has also provided the following field guidance: "When an equivalent degree or alternative work experience is acceptable, the employer must specifically state on the ETA 750, Part A as well as throughout all phase of recruitment exactly what will be considered equivalent or alternative in order to qualify for the job." *See* Memo. From Anna C. Hall, Acting Regl. Adminstr., U.S. Dep't of Labor's Empl. & Training Administration, to SESA and JTPA Adminstrs., U.S. Dep't. of Labor's Empl. & Training Administration, Interpretation of "Equivalent Degree, " 2 (June 13, 1994). DOL has also stated that "[w]hen the term equivalent is used in conjunction with a degree, we understand to mean the employer is willing to accept an equivalent foreign degree." *See* Ltr. From Paul R. Nelson, Certifying Officer, U.S. Dept. of Labor's Empl. & Training Administration, to Joseph Thomas, INS (October 27, 1992). To our knowledge, this field guidance memoranda has not been rescinded.

certification, the petition may not be approved under either the professional or skilled worker category pursuant to section 203(b)(3) of the Act.

Based on the foregoing, the petitioner failed to demonstrate that the beneficiary met the qualifications of the labor certification. 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.