

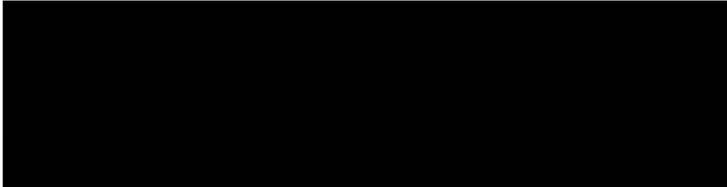


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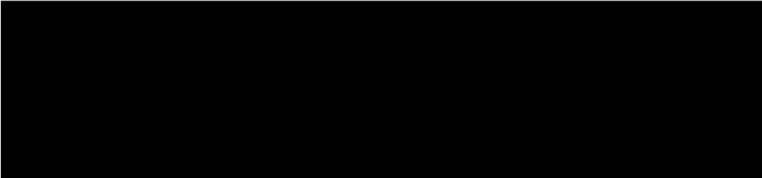


FILE: SRC 07 800 14862 Office: TEXAS SERVICE CENTER Date: **JUN 13 2008**

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas 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 search engine marketing company. It seeks to employ the beneficiary permanently in the United States as an engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 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, the director determined that the beneficiary did not possess a foreign equivalent degree to a Bachelor of Science in Computer Science, Mathematics, Engineering or a related field.

On appeal, counsel made a brief statement on the Form I-290B Notice of Appeal or Motion. Counsel also indicated that a brief would follow within 30 days. Counsel dated the appeal November 14, 2007. As of April 3, 2008, this office advised counsel by facsimile that no additional submission had been received and requested a copy of anything that had been timely submitted. This office afforded five business days in which to respond. As of this date, more than three weeks later, this office has received no response. Thus, the appeal will be adjudicated based on counsel's statements on the Form I-290B and the record before the director. For the reasons discussed below, we find that the serious discrepancies between the evaluations and the record and between the different evaluations themselves preclude a finding that the beneficiary has the required education.

In pertinent part, section 203(b)(2) of 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.*

The beneficiary possesses a foreign three-year bachelor's degree. Thus, the issues are whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification and whether he has a foreign degree equivalent to a U.S. baccalaureate degree as required for the classification sought.

Qualifications for the Job Offered

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).

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (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)(5) 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)(5), 8 U.S.C. § 1182(a)(5). 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, 736 F. 2d at 1309.

The key to determining the job qualifications is 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.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. CIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which CIS 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. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). CIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. CIS 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, Part H, line 4, of the labor certification reflects that a Master's degree in Computer Science is the minimum level of education required. Line 6 reflects that three years of experience in the job offered is also required. Lines 7 and 7-A reflect that a degree in Mathematics, Engineering or a related field is also acceptable. Line 8 reflects that a combination of education or experience is acceptable in the alternative. Specifically, lines 8-A through 8-C reflect that a Bachelor's degree plus five years is the acceptable alternative. Line 9 reflects that a foreign educational equivalent is acceptable.

The beneficiary has a three-year Bachelor of Science from Jamia Millia Islamia, New Delhi. No field of concentration is specifically identified on the diploma or the transcript. In addition to the compulsory subjects, the beneficiary completed nine subject "papers" and three practicals in both Physics and Chemistry and six "papers" and no practicals in math. Initially, **the petitioner submitted** evaluations from [REDACTED]¹ of Career Consulting International and [REDACTED]² of Marquess Educational Consultants. Both [REDACTED] and [REDACTED] conclude that the beneficiary completed 120 credits. [REDACTED] reaches this conclusion by assigning 3.53 credits to each course the beneficiary took. While she explains that her "process" includes using "unit credits" or "clock hours of instruction" from academic records to determine the number of credits, the beneficiary's transcript in the record does not include either figure. Both [REDACTED] and [REDACTED] conclude

¹ [REDACTED] indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure Robert de Sorbon but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr/index1.html, Ecole Superieure Robert de Sorbon awards degrees based on past experience.

² [REDACTED] indicates he has a "canonical diploma of Sacrae Theologiae Professor" from St. David's Oecumenical Institute of Divinity, which he equates to a Doctorate of Divinity.

that, despite the far greater number of courses in Physics and Chemistry, the beneficiary has a Bachelor of Science with a concentration in Math.

On July 12, 2007, the director requested evidence that the beneficiary's field of study was one of the fields specified on the ETA Form 9089. In response, the petitioner submitted a new evaluation from [REDACTED]³ of the European-American University.⁴ [REDACTED] asserts that the beneficiary actually completed 154 "semester credit hours" total with a concentration in Math. Dr. [REDACTED] provides a far different breakdown in credits from [REDACTED] listing the credits for the courses other than math as either 3.73 or 5.6 and the credits for the beneficiary's math classes as either 7.47 or 11.20. [REDACTED] provides no explanation for assigning a far higher number of credits for the beneficiary's math classes. The record includes what appears to be a self-serving list of lectures per 28 weeks and credits. There is no evidence this list of lectures is an official document from Jamia Millia Islamia.

The petitioner also submitted selected pages from a 2002-2003 publication from Jamia Millia Islamia containing the syllabus for a "B.Sc./B.A.(Pass), Mathematics." Page 1 of the syllabus shows two papers in Part I, two papers in Part II and three papers in Part III including Programming in C and 4+2. The petitioner submitted an electronic mail message from Israr Ahmad asserting that the Programming in C and 4+2 course was added after the beneficiary graduated. The petitioner also submitted a letter from [REDACTED] to the Dean of Jamia Millia Islamia requesting the number of hours per paper. [REDACTED] identifies himself as a "programmer" in the Math Department at Jamia Millia Islamia but the letter is not on the university's letterhead and the record contains no evidence that [REDACTED] has or had any affiliation with the university. We note that the petitioner did not submit Page 2 of the publication containing the Math Department's syllabus, leaving open the possibility that Part III actually involved more than just the three courses.⁵ In addition, the syllabus provides that each paper except Paper V, Real Analysis, involved four lectures per week of unknown duration. The syllabus lists no lecture hours for Paper V. Yet, [REDACTED] assigned far more credits for Paper VI than the other papers. [REDACTED] does not explain this conclusion. Moreover, the record contains no evidence that the beneficiary's Physics and Chemistry courses each involved fewer lecture hours as claimed by [REDACTED]. As noted above, [REDACTED] assigned an equal number of credits for each paper. In fact, an evaluation of another individual's three year degree submitted into the record, prepared by Foreign Consultants, Inc., assigns eight credit hours to Physics I, II, III and IV, the same number assigned to that individual's math classes.

The director concluded that the evaluations did not sufficiently explain how the beneficiary, who completed 12 courses and practicals in Physics and 12 courses and practicals in Chemistry but only

³ [REDACTED] also indicates he has a canonical diploma of Sacrae Theologiae Professor, equivalent to a Doctorate of Divinity.

⁴ According to the university's website, www.thedegree.org, it is an unaccredited "self-validating" university of which [REDACTED] is the president.

⁵ We note that the university's website, http://jmi.nic.in/Fnat/Courses_Maths.htm, includes a link to the current Part III syllabus, which lists six papers including Programming in C and Numerical Analysis. The beneficiary only completed two papers in Part III of his education.

six courses in Math could be considered to have earned a degree with a concentration in Math. On appeal, counsel asserts that the beneficiary has the foreign equivalent of a Bachelor's degree in Math "as determined by a number of recognized foreign education evaluators."

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *see also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

Moreover, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Id.* The petitioner has not resolved the serious inconsistencies between the evaluations and the record and between the evaluations themselves. In addition, none of the evaluators compare the beneficiary's coursework in math with the coursework needed to obtain a baccalaureate in math in the United States. Thus, the evaluations are not persuasive evidence that the beneficiary has a degree in one of the fields specified on the ETA Form 9089.

Eligibility for the Classification Sought

Given the credibility issues regarding the evaluations submitted as discussed above, we also cannot conclude that the beneficiary has the necessary education for the classification sought.

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. 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."⁶ 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. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

As stated above, the petitioner submits three evaluations, all of which conclude that the beneficiary's three-year degree is equivalent to a U.S. baccalaureate. As noted by the director, these evaluations conflict with one another. Specifically, [REDACTED] asserts that the beneficiary earned 154 credits while both [REDACTED] and [REDACTED] assert that the beneficiary earned only 120. Moreover, Dr. [REDACTED]'s course-by-course evaluation is far different that [REDACTED]'s.

In his decision, the director referenced an Indian government website confirming that India offers both three and four year baccalaureate degrees and notes that while the evaluations reference some U.S. universities that accept three-year degrees for entry into graduate programs, many do not. While the director went beyond the record to confirm this fact, it is apparent from the materials submitted by the petitioner. For example, the petitioner submitted what appears to be an unpublished article coauthored by [REDACTED] and [REDACTED]. The article concedes:

None of the members of N.A.C.E.S. who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so.

In this process, we encountered a number of the objections to equivalency that have already been discussed.

⁶ 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.

██████████ Ed.D., President of Educational Credential Evaluators, Inc., commented thus.

“Contrary to your statement, a degree from a three-year “Bologna Process” bachelor’s degree program in Europe will NOT be accepted as a degree by the majority of universities in the United States. Similarly, the majority do not accept a bachelor’s degree from a three-year program in India or any other country except England. England is a unique situation because of the specialized nature of Form VI.”

* * *

International Education Consultants of Delaware, Inc., raise similar objections to those raised by ECE.,

“The Indian educational system, along with that of Canada and some other countries, generally adopted the UK-pattern 3-year degree. But the UK retained the important preliminary A level examinations. These examinations are used for advanced standing credit in the UK; we follow their lead, and use those examinations to constitute the an [sic] additional year of undergraduate study. The combination of these two entities is equivalent to a 4-year US Bachelor’s degree.

The Indian educational system dropped that advanced standing year. You enter a 3-year Indian degree program directly from Year 12 of your education.”

In addition, the October 2006 Council of Graduate Schools (CGS) Research Report reveals that 18 percent of survey respondents stated that they do not accept Bologna three-year degrees and an additional four percent do so provisionally. An additional 49 percent of respondents evaluate the degrees for equivalency and the final 29 percent determine the “individual’s competency to succeed.” While these responses do not relate specifically to Indian three-year degrees, they strongly suggest that three-year degrees are not universally accepted for admission to graduate school in the United States and, in fact, the majority of universities do not accept them, accept them provisionally or consider them only on a case-by-case basis. It can be presumed that if a three-year degree were truly equivalent to a four-year baccalaureate in the United States, they would be universally accepted at all U.S. universities as such without provisional acceptance.

The existence of accelerated programs in the United States that can be completed in only three years with extra study or credit for advanced placement courses does not create a presumption that the typical three-year program at a particular foreign institution is necessarily equivalent to a U.S. baccalaureate.

The petitioner submitted evaluations of other three-year degrees and letters from ██████████ President of Education Consultants and Evaluators International in Miami and Dean of Information Technology at Marquess College, London asserting that three-year Indian degrees require the same number of “contact hours” as a four-year baccalaureate in the United States; ██████████

Principal at B.E.S. Sant Gadge Maharaj College discussing three-year degrees at Mumbai University where he claims to have taught; ██████████ Principal of The New College in Chennai purporting to confirm that an individual other than the beneficiary attended 180 lecture hours for each of 15 subjects for a Bachelor of Commerce degree at the University of Madras; and ██████████, an alleged professor at Mumbai University although neither of his two letters appears on Mumbai University letterhead. ██████████ asserts that U.S. baccalaureate degrees involve 1800 classroom (contact hours) and that Indian three-year degrees involve between 2000 and 3000 contact hours. In his second letter, ██████████ i asserts that one examination mark represents between 1.2 and 2 clock hours of instruction.

The record contains no published materials about the Indian education system that would support the above opinions. Significantly, the petitioner submitted the covers of *A P.I.E.R. Workshop Report on South Asia: The Admission and Placement of Students from Bangladesh, India, Pakistan and Sri Lanka* (1986) and 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* (1997). Yet, the petitioner did not submit copies of any of the contents of either publication that might support the evaluations contained in the record.⁷ Instead, the petitioner submits an opinion piece in *ADSEC News* from April 2005. We acknowledge that this opinion article proposes the possibility of considering a three-year degree *after* completion of a CBSE or CISCE-Grade secondary school certificate. The record in this matter, however, contains no evidence the beneficiary received a CBSE or CISCE-Grade secondary school certificate before attending Jamia Millia Islamia. In all other situations, the *ADSEC News* opinion piece recommends only that a three-year baccalaureate in combination with a postgraduate diploma be considered for graduate admission. This opinion piece is not consistent with the evaluations asserting that the beneficiary's three-year degree alone is equivalent to a four-year baccalaureate in the United States. Regardless, the record contains no evidence that any peer-reviewed publication on evaluating Indian degrees has adopted the opinion expressed in the *ADSEC News* piece.

In his evaluation concluding that the beneficiary's three-year degree following 12 years of primary and secondary education is equivalent to 120 credits and a four-year degree in the United States, Dr. Kersey relies on *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 (D. Or. 2006). The judge in that case, however, found that CIS is entitled to deference in interpreting its own regulatory definition of advanced degree. *Id.* at *11. More specifically, the judge found that CIS was entitled

⁷ *A P.I.E.R. Workshop Report on South Asia: The Admission and Placement of Students from Bangladesh, India, Pakistan and Sri Lanka* 180 (1986) provides that "transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year." The following chart states that 12 years of primary and secondary education followed by a three-year baccalaureate "may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis." (Emphasis in original.) We note that the undergraduate placement recommendations provided in the 1986 PIER publication were adopted 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* 43 (1997). While the petitioner did not introduce this complete information into the record, it is unclear why the petitioner would submit the covers of these publications if the contents of these publications are not worthy of consideration.

to interpret “a degree” in the context of a professional and advanced degree professional to exclude an individual with an Indian three-year degree followed by membership in the Institute of Chartered Accountants of India. *Id.* at *10-11. In the matter before us, the beneficiary only has a three-year degree. Thus, the beneficiary in this matter has less education than the beneficiary in *Snapnames.com, Inc.*

Furthermore, 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 cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge’s decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the 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 CIS 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.”)

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). ██████ asserts that this case “is not chiefly a case that address the issue of 3 year Indian degrees at all.” Regardless, the decision evaluates the alien’s transcript and concludes: “Thus, he could only have completed a 3-year course of study, which is not equivalent to a United States baccalaureate degree, usually requiring 4 years of study.” *Id.* at 245.

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.A.N. 6784, 1990 WL 201613 at *6786 (October 26, 1990). At the time of enactment 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 (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).

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree.

In summary, the beneficiary does not meet the job requirements on the labor certification. In addition, the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. For these reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

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.