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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: JUL 30 2009

IN RE:

Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

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, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom
Acting 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 wireless communications services provider. It seeks to employ the beneficiary permanently in the United States as a Network and Switching Sub-system /Base Station (NSS/B) Senior Engineer. 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 petitioner failed to demonstrate that the beneficiary satisfied the minimum level of education stated on the labor certification.

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).¹

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. 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 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), provides that "the term "profession" shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

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 May 17, 2006.² The Immigrant Petition for Alien Worker (Form I-140) was filed on July 10, 2006.

¹ The submission of additional evidence on appeal is allowed by the instructions to 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).

² 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

The job qualifications for the certified position of a Network and Switching Sub-system /Base Station (NSS/B) Senior Engineer are found on Part H of the ETA Form 9089. Part H-11 (Addendum), describes the job duties to be performed as follows:

Provide 2nd line technical support for Ericsson Mobile Switching Centers (MSC) and Base Station Controllers (BSC) on a 24/7 rotation schedule. Resolve complex Global System for Mobile Communications (GSM) call failure issues related to Ericsson MSC/BSCs including handover failures and mobile originating and terminating failures using AXE 810 Hardware (HW), APZ 212/40s and Ericsson Automatic Meter Reading Advance Mobile Radio Adaptive Multi Rate (AMR) Frame Relay (FR)/Half Rate (HR) configurations. Perform change deliveries, change notes, and technical notes loading. Monitor, analyze and troubleshoot Signaling Connection Control Part (SCCP) message failure, and Signaling System No. 7 (SS7) tracing using GeoProbe or equivalent. Manage subscriber data and perform file patching and call tracing.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part H-4 and H-4B of the ETA Form 9089 state that a Bachelor's degree in a field of study of electrical, electronics or telecommunications engineering or related field is required. Part H-5 states that no training is required and Part H-6 provides that no employment experience in the job offered is required. Part H-7 states that no alternate field of study is required and Part H-8 provides that no alternate combination of education and experience is acceptable. Part H-9 states that a foreign educational equivalent is acceptable. Part H-10, H-10A and H-10B (and addendum) state that 24 months of work experience in an alternate occupation is required. Alternate occupations are stated as a switch engineer, network engineer, telecommunications engineer or any combination thereof or any suitable combination of education, training or experience are acceptable.

Part H-14(addendum), additionally provides that the applicant:

Must have experience (1) resolving complex GSM call failures related to Ericsson MSCs, including handover failures and mobile originating and terminating failure; (2) using AXE 810 HW, APZ 212/40s and Ericsson AMR FR/HR configurations; (3) monitoring, analyzing and troubleshooting SCCP; and (4) SS7 tracing using GeoProbe or equivalent. Must be available 24/7.

Additionally, Part I-1 indicates that the petitioner designated the ETA Form 9089 as an application for a professional occupation, as well as indicating on a letter, dated June 23, 2006, that it sought to classify the beneficiary as a professional. Further, as indicated to DOL, because it considered the

immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear.

job to be a professional position, the petitioner conducted additional recruitment. (Exhibit C, petitioner's response to request for evidence).

In support of the beneficiary's educational qualifications, the petitioner submitted a copy of the beneficiary's diploma from the State Board of Technical Education and Training in electronics and communications engineering (Govt. Polytechnic for Women Cuddapah) India. It indicates that the beneficiary was awarded this diploma in 1990 and that it represented a 3-year course of study. The petitioner also provided a copy of a certificate indicating that the beneficiary was elected to be an associate member in The Institution of Electronics and Telecommunication Engineers (IETE) in 1995. The petitioner additionally submitted five credentials evaluations as follows:

- A. The Evaluation Service, Inc., provided an evaluation written by [REDACTED] dated November 18, 2004. She determines that the beneficiary's three-year diploma in electronics and communications engineering is equivalent to a U.S. associate of applied science degree in electronics and engineering technology. She also concludes that the associate membership in the IETE is the academic equivalent of a U.S. bachelor's degree in electronics engineering.
- B. [REDACTED] of Park Evaluations offers an evaluation, dated September 21, 2006. He determines that the beneficiary's completion of only the coursework involved in obtaining her IETE associate membership represents the equivalent of a U.S. Bachelor of Science degree.
- C. [REDACTED] of Education International Inc. provides an evaluation, dated September 29, 2006. He states the beneficiary's studies under the auspices of the IETE indicate that the beneficiary has achieved the equivalent of a U.S. Bachelor's degree in Electronics Engineering.
- D. [REDACTED] of Career Consulting International provides an evaluation, dated April 17, 2007 in which she determines that the beneficiary's diploma from the State Board of Technical Education and Training, standing alone, is the U.S. equivalent of a Bachelor of Science degree, representing 120 semester credit hours.
- E. [REDACTED] of Marquess Educational Consultants additionally offers an evaluation, dated April 17, 2007, determining that the beneficiary's diploma from the State Board of Technical Education and Training is the U.S. equivalent of a Bachelor of Science, representing 120 semester credit hours, with a major in Electronics and Communications Engineering.

The director denied the petition on September 7, 2006. He determined that the beneficiary's educational credentials could not be accepted as a foreign equivalent degree to a U.S. bachelor's degree. The director noted that the combination of lesser diplomas, degrees or professional memberships would not be acceptable as a foreign equivalent degree.

On appeal and in response to the AAO's request for evidence, counsel asserts that the beneficiary's associate membership in the IETE, by itself, is equivalent to a U.S. bachelor's degree in electronics

engineering. In support of the beneficiary's qualifying academic credentials, counsel submits two additional evaluations from [REDACTED] of the Evaluation Service, Inc. The earliest one is dated September 20, 2006 and is a revised version of the one mentioned above, dated November 18, 2004, except that it omits an analysis of the beneficiary's 1990 diploma from the State Board of Technical Education and Training, which it had previously equated to a U.S. associate's degree. An additional evaluation, dated May 14, 2009, is also provided by [REDACTED]. She reiterates that the beneficiary's associate membership in the IETE is the academic equivalent of a U.S. bachelor's degree in electronics engineering.

The proffered position is for a network and switching sub-system /base station (NSS/B) senior engineer. Thus, because the job is for an engineer, it falls under section 101(a)(32) of the Act and is statutorily prescribed as a professional occupation.

Additionally, part A of the ETA Form 9089 indicates that DOL assigned the occupational code of 17-2071.00, with accompanying job title, electrical engineer, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/link/summary/17-2071.00>³ and its description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position.

DOL assigns a standard vocational preparation (SVP) range of 7.0 to 8.0 and above to the occupation, which means that "[M]ost of these occupations require a four-year bachelor's degree, but some do not. Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified.

Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

Many of these occupations involve coordinating, supervising, managing, or training.

See id.

The position requires a Bachelor's degree in electrical, electronics or telecommunications engineering or related field as well as two years of experience in a defined alternate occupation as a switch engineer, network engineer, telecommunications engineer or any combination thereof or any

³ (Accessed June 19, 2009).

suitable combination of education, training or experience.⁴ This is more than the minimum required by the regulatory guidance for professional positions found at 8 C.F.R. § 204.5(l)(3)(ii)(C). Thus, combined with its statutory definition and DOL's classification and assignment of educational and experiential requirements for the occupation, the certified position must be considered as a professional occupation.

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 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 degree to a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

As noted above, on March 9, 2009, the AAO issued a request for evidence to the petitioner. In this request, the AAO noted that the petitioner did not specify on the ETA Form 9089 that the minimum academic requirements of a bachelor's degree might be met through a combination of lesser degrees and/or a quantifiable amount of work experience. The AAO further advised that according to the Fifth Edition (2003) of the American Association of Collegiate Registrars and Admissions Officer (AACRAO) *Foreign Educational Credentials Required*, a polytechnic engineering diploma such as the one the beneficiary obtained in 1990 is equivalent to up to one year of undergraduate study in the United States and that the labor certification application, as certified, did not demonstrate that the petitioner would accept a combination of degrees that are individually less than a four-year U.S. bachelor's degree or its foreign equivalent.

At the outset, it is noted that section 212(a)(5)(A)(i) of the Act and the scope of the regulation at 20 C.F.R. § 656.1(a) describe the role of the DOL in the labor certification process as follows:

⁴ As noted in the AAO's request for evidence, the petitioner's description of "any suitable combination of education, training or experience" modifies only the 24 month experience requirement and not H-8 related to alternate combinations of education and experience. It is further noted that the documentation submitted in response to the AAO's request for evidence, reflecting the petitioner's recruitment efforts, omit any reference to "any suitable combination of education, training or experience" and simply state "two years of relevant experience."

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 left to U.S. Citizenship and Immigration Services (USCIS) to determine whether the proffered position and alien qualify for a specific immigrant classification or even the job offered. 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.

* * *

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).⁶

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

⁶ The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, has stated:

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

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now USCIS or the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

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 polytechnic diploma in electronics and communications engineering will not be considered to be the "foreign equivalent degree" to a United States 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 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.

We note the decision in *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. November 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. *Id.* 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. *Id.* at *14. However, in professional and advanced degree professional cases, where the beneficiary is statutorily required to hold a baccalaureate degree, the court determined that USCIS properly concluded that a single foreign degree or its equivalent is required. *Id.* at *17, 19. In that case, the beneficiary had received a three-

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).

year Bachelor of Commerce and had subsequently completed the course work and examinations to become a member of the Institute of Chartered Accountants in India. In the instant case, unlike the labor certification in *Snapnames.com, Inc.*, the petitioner's intent regarding educational equivalence is clearly stated on the ETA Form 9089 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 ETA Form 9089 does not specify an equivalency to the requirement of a Bachelor's degree in electrical, electronics or telecommunications engineering or a related field.

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also, *Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by professional regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification application form]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

Moreover, 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." (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 1289, 1295 (5th Cir. 1987). It can be presumed that Congress' narrow requirement 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 member of the profession 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 a foreign equivalent degree to a U.S. baccalaureate, we could not consider education earned at an institution other than a college or university. The professional regulation contains a degree requirement in the form of an official college or university record. IETE is not an academic institution that can confer an actual degree with an official college or university record. Therefore, an associate membership may not be considered to be a *foreign equivalent degree* pursuant to the professional regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C).⁷

In this matter, while IETE may offer courses and examinations, there is no evidence that IETE is a college or university for purposes of classification of a professional as is statutorily required in this case.

Moreover, as advised in the request for evidence issued to the petitioner by this office, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).⁸ According to its website, www.aacrao.org, is “a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries.” Its mission “is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO’s National Council on the Evaluation of Foreign Educational Credentials. “An Author’s Guide to Creating AACRAO International Publications” 5-6 (First ed. 2005), available for download at [www.aacrao.org/publications/guide to creating international publications.pdf](http://www.aacrao.org/publications/guide%20to%20creating%20international%20publications.pdf). 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.* at 11-12.

⁷ Similarly, the beneficiary’s diploma from the State Board of Technical Education and Training, is not a diploma issued by a college or university to meet the standard of the regulation at 8 C.F.R. §204.5(l)(3)(ii)(C). Additionally, the State Board of Technical Educational as addressed above is not equivalent to a bachelor’s degree.

⁸ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the District Court in Minnesota determined that the AAO provided a rational explanation for its reliance on information provided by the American Association of Collegiate Registrar and Admissions Officers to support its decision.

As noted above, EDGE's credential advice provides that a diploma in engineering represents the attainment of education comparable to up to one year of university study in the United States. Credit may be awarded on a course-by-course basis.

It is noted that the petitioner provided a credential evaluation, dated April 17, 2007, from [REDACTED] of Career Consulting International. Counsel further provided an evaluation, dated April 17, 2007, from [REDACTED] of Marquess Educational Consultants, Ltd. (UK). Both the [REDACTED] and the [REDACTED] evaluation refer to the beneficiary's three-year Indian diploma from the State Board of Technical Education and Training as reflecting 120 credit hours based on "contact hours" using the "Carnegie Unit" to equate to a U.S. bachelor's degree. Both evaluations consider the beneficiary's diploma as a bachelor of science degree. As is evident from the record, the beneficiary has never been awarded any diploma designated as a bachelor's degree. [REDACTED] reaches the conclusion that the beneficiary's polytechnic diploma is equivalent to a four-year U.S. bachelor's degree by assigning 4.29 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.

Additionally, the [REDACTED] evaluation contained several attachments including the cover pages and a few pages 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 sSeries India: A Special Report on the Higher Education System and Guide to the Placement of Students in Educational Institutions in the United States (1997)*. However, this submission was not supported by copies from either publication which determines that a three-year bachelor of science degree or a three-year diploma program such as the beneficiary's is the U.S. equivalent of a four-year bachelor of science degree.¹⁰

⁹ [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. She further indicates that she is currently a professor at Marquess College in London where she oversees the standards for granting college level credit for experiential learning. Marquess College was initially formed by [REDACTED] having formerly been the University for Self-Empowerment. See www.the.degree.org/interview/html.

¹⁰ It is noted that *The Admission and Placement of Students from Bangladesh, India, Pakistan and Sri Lanka (1986)* indicates that a 12 + 3 years of academic study including a single bachelor of science degree in India may be considered to be the U.S. equivalent of up to three years (0-90 semester credits) to be determined on a course by course basis. It is further noted that information contained in the 1986 AACRAO PIER publication, indicates that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. As with EDGE, this publication represents conclusions vetted by a team of experts. In *A P.I.E.R. Workshop Report on South Asia* at p. 180, it explicitly states that "transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year." The [REDACTED] evaluation further references additional correspondence and research regarding educational equivalency using excerpts from a 1993 United Nations Educational

It is noted that the 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, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). 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). Additionally, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate.

With regard to the beneficiary's associate membership in the IETE, as asserted by counsel as qualifying the beneficiary for approval in the professional category, and as noted by the AAO in its request for evidence, the AAO also consulted *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). The 1986 *P.I.E.R. Workshop Report on South Asia* indicates that an associate membership in the Institution of Electronics and Telecommunications Engineers (IETE) is based upon sequential examinations, preparatory courses and employment experience. An associate membership is awarded to students who have passed Section A and B of the Graduateship Examination and who have the requisite employment experience. *Id.* at p. 55.¹¹ The P.I.E.R. World Education Series also indicates that an associate membership in the IETE

Scientific and Cultural Organization (UNESCO) report regarding recognition of foreign educational qualifications. UNESCO has six regional conventions on the recognition of qualifications, and one interregional convention. A UNESCO convention relating to academic qualifications is a legal agreement between countries agreeing to recognize academic qualifications issued by other countries that have ratified the same agreement. While India has ratified one UNESCO convention on the recognition of qualifications (Asia and the Pacific), the United States has ratified none of the UNESCO conventions on the recognition of qualifications. In an effort to move toward a single universal convention, the UNESCO General Conference adopted a Recommendation on the Recognition of Studies and Qualifications in Higher Education in 1993. The United States was not member of UNESCO between 1984 and 2002, and the 1993 UNESCO Recommendation is not a binding legal agreement to recognize academic qualifications between UNESCO members. See <http://www.unesco.org>. Moreover the 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, let alone a three-year technical diploma such as the beneficiary's, must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits.

¹¹In the credential evaluation, dated May 14, 2009, from the Evaluation Service, Inc., [REDACTED] describes the professional experience requirement of associate membership in the IETE as an "externship" within an academic program. No first-hand evidence corroborating such a depiction has been submitted. It is noted that the 1986 *P.I.E.R. Workshop Report on South Asia* merely indicates that two years of employment in the field of electronics, telecommunications, or an allied

while not designated as a bachelor's degree, would be conditionally considered for U.S. graduate admission in a closely related field if the specialized nature of the program followed is appropriate preparation.

However, it remains that associate membership in the IETE does not transform the IETE into a college or university degree or designate its associate membership as a "degree" for purposes of classification of a professional as is statutorily required in this case. *See Snapnames.com, v. Michael Chertoff*, 2006 WL 3491005 at *11; *see also* Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32). A combination of educational credentials, passage of exams and work experience culminating in an associate membership in the IETE may constitute the "equivalent" of a bachelor's degree in some circumstances, but as determined above, and as indicated by the petitioner's intent in treating the certified position as one seeking visa classification in the professional category, it does not represent a single-source "foreign equivalent degree," as is required by the professional regulation.

Further, the ETA Form 9089 does not provide that the minimum academic requirements of a bachelor's degree in electrical, electronics or telecommunications engineering or a related field of study might be met through a combination of a polytechnic diploma and an associate membership in the IETE or some other formula that is specified on the ETA 9089.¹²

field is required before taking Section A, Part II of the Graduateship Examination and an additional two years of employment experience is required before taking Section B of the examination. *See P.I.E.R. Workshop Report on South Asia*, p.54 (1986). Updated information from EDGE indicates that in its credential advice and credential description sections describing associate memberships in one of "three Indian professional engineering associations," identified as The Institution of Engineers, Indian Institution of Electronics and Telecommunications Engineers or the Institution of Mechanical Engineers, it considers an associate membership in the IETE to represent "attainment of a level of education comparable to a bachelors degree in the United States." It indicates that associate membership is based upon passage of Part A and B of the pertinent examination and follows the higher secondary certificate and the engagement in the engineering or industrial profession for a period of 5 years. Therefore, the analysis of the credential's equivalency is based on a combination of examinations and experience and is not based on a degree issued by a college or university.

¹² Even if the petition qualified for skilled worker consideration, the recruitment efforts submitted in response to the AAO's request for evidence (petitioner's Exhibit C), indicate that the petitioner specifically recruited the job as a professional one using the language of the professional regulation in, for example, advising DOL that it considered the job as a professional occupation and describing the specified bachelor's degree or the "foreign equivalent degree." An internet posting (February 13 to March 16, 2006), also states that the candidate must have a "bachelor's degree in electrical, electronics or telecommunications engineering or related field or the foreign equivalent degree and two years of relevant work experience." Newspaper advertisements from the *Seattle Times* on February 19, 2006 and on February 26, 2006, similarly advised that the applicant must have a bachelor's degree in electrical, electronics or telecommunications engineering or related field or the foreign equivalent degree and two years of relevant work experience." The internal job posting and

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)(3)(A)(ii) of the Act.

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.

multiple electronic media advertisements posted in February and March 2006, provided with the petitioner's response to the request for evidence used the same language. Additionally, we note that none of the recruitment pieces listed that the petitioner would accept "any suitable combination of education, training, or experience." *See* footnote 4 above. Further, the advertisements did not demonstrate that the petitioner would consider an expansive degree requirement to allow an applicant to qualify with less than a four-year bachelor's degree. Therefore, the petitioner would not be approvable under the skilled worker category.