

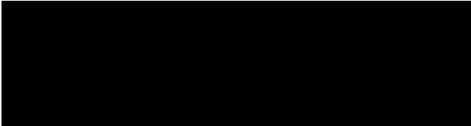


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File:  Office: Nebraska Service Center

Date: APR 29 2002

IN RE: Petitioner:
Beneficiary:



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

IN BEHALF OF PETITIONER:



PUBLIC COPY

INSTRUCTIONS:

This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a software consultant. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify as an advanced degree professional. The director also questioned whether the petitioner was a successor in interest to the entity who filed the labor certification in behalf of the beneficiary.

On appeal, the petitioner submits an amendment to the petitioner's articles of incorporation changing its name from that which appears on the labor certification to the name which appears on the petition. As such, the petitioner has resolved that issue. In addition, counsel argues that the beneficiary has the equivalent of an advanced degree.

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 U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level.

8 C.F.R. 204.5(k)(2) permits the following substitution for an advanced degree:

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.

(Emphasis added.) The petitioner claims that the beneficiary has the equivalent of a baccalaureate degree plus at least five years of progressive experience. The petitioner initially submitted the beneficiary's bachelor of commerce degree issued by the University of Kerala, a "Diploma in Systems Development" from the National Institute of Information Technology, and an "Academic Evaluation" from the Trustforte Corporation. As quoted by the director, the evaluation provides the following information regarding the beneficiary's bachelor of commerce degree:

The nature of the courses and the credit hours involved indicate that he satisfied substantially similar requirements to the completion of three years of academic studies *leading to* a baccalaureate degree from an accredited institution of higher education in the United States.

(Emphasis added.) Based on this statement, the director concluded that the beneficiary did not have a foreign degree which was equivalent to a U.S. baccalaureate degree. The director also questioned whether a degree in commerce was sufficiently related to the beneficiary's proposed

position in computer science. On appeal, counsel argues that the evaluation goes on to conclude that the beneficiary's bachelor degree of commerce in combination with his "Diploma in Systems Evaluation" is the equivalent of a bachelor's of science degree in computer information systems. Specifically, the evaluation provides:

Based on the reputations of the University of Kerala and the National Institute of Information Technology, the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, considered together with the completion of no less than one year of postgraduate academic studies in computer science, we conclude that [the beneficiary] has completed a combination of commerce/management and computer science which is analogous to the attainment of a Bachelor of Science Degree in Computer Information Systems. Accordingly, it is the judgment of the Trustforte Corporation that [the beneficiary] completed the equivalent of a Bachelor of Science Degree in Computer Information Systems from an accredited institution of higher education in the US.

Matter of Sea, Inc., 19 I&N 817 (Commissioner 1988), provides:

This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

As stated above, the beneficiary must have a degree which is the equivalent of a U.S. baccalaureate degree. A combination of degrees which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree does not meet the regulatory requirement of a foreign equivalent degree. In light of the above, we concur with the director that the beneficiary does not have the equivalent of a U.S. baccalaureate degree. As such, the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree. Thus, the beneficiary is not an advanced degree professional as defined in the regulations.

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

ORDER: The appeal is dismissed.