

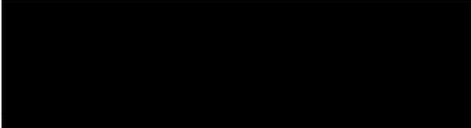


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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File:

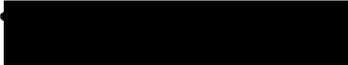


Office: Vermont Service Center

Date:

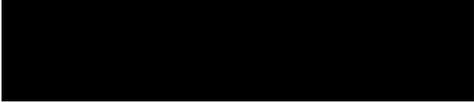
06 DEC 2002

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:



identifying data deleted
prevent identity invasion
invasion of personal privacy

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, Vermont 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 an SAP 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.

On appeal, 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.

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.

The petitioner claims that the beneficiary has the equivalent of a Master's degree. The petitioner initially submitted the beneficiary's bachelor of commerce degree issued by the University of Bombay in March 1986 (although the credit hours appear to have been completed by April 1983), a "Certificate of Membership" issued by the Institute of Chartered Accountants of India in July 1987, the beneficiary's final examination results for certification as a chartered accountant, and an evaluation of these credentials by International Education Evaluation, Inc. (IEE). In its evaluation, IEE notes that the beneficiary's bachelor of commerce degree is a three-year degree and asserts that one year of Indian college is equivalent to one year in the United States. IEE then notes that the beneficiary passed the final examination of the Institute of Chartered Accountants of India in May 1987 after being exempt from the preliminary exam due to his grades. IEE concludes that the Certificate of Practice received the same month compares to certification as a certified public accountant (CPA) in the United States. The evaluation then states:

[The beneficiary] presents from India proof of the completion of post secondary education credits which equate fully to the U.S.A. Bachelor of Science degree in Accounting with a minor in Business Administration and to the Master's of Science degree in Accounting. The Final Examination is recognized in India and throughout the world as the equivalent of the Master's degree for one who enters it with a Bachelor's degree.

The director concluded that the beneficiary did not have a *degree* that was equivalent to a U.S. Master's degree. On appeal, counsel argues that "numerous decisions" issued by the Administrative Appeals Office (AAO) support the proposition that the beneficiary need not have the "exact title of the degree listed" on the labor certification. Further, counsel notes that the labor certificate permits the "educational equivalent" of a U.S. Master's degree.

We acknowledge that the evaluation states that the Institute of Chartered Accountants in India is "much the same" as a U.S. college or university. Thus, the evaluator implies that the institute confers degrees. If the certification is a degree, however, 8 C.F.R. 204.5(k)(3)(A) requires "an official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." While the petitioner submitted the beneficiary's final examination results, he did not submit an official academic record for his work at the institute. Moreover, the evaluation is internally inconsistent because the very next sentence states that the Institute of Chartered Accountants in India "compares to similar accounting associations in the United States." Accounting associations in the United States are not similar to colleges or universities and do not confer degrees.

Further, the evaluation states that "one year of Indian college or university education equates to one year in the United States." The beneficiary attended the University of Bombay for two years. As such, the beneficiary does not appear to even have a foreign degree that is the equivalent of a U.S. four-year baccalaureate degree.

As stated above, 8 C.F.R. 204.5(k)(2) provides that an advanced degree is "any United States academic or professional *degree* or a foreign equivalent *degree* above that of baccalaureate." The regulation expressly permits only one substitution for that requirement, specifically, "a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty." The labor certification accompanying the petition, however, does not permit the substitution of a bachelor's degree plus five years of experience, progressive or otherwise. Therefore, the petitioner must demonstrate that the beneficiary has a *degree* that is equivalent to a U.S. academic or professional degree above a baccalaureate degree. Professional certification, even as the result of an examination, does not meet the regulatory requirement of a foreign equivalent *degree*.

The AAO decisions provided by counsel are not persuasive. First, these decisions, the most recent from 1994, are not precedents and, thus, are not binding. Moreover, they are easily distinguished. The 1994 decision, a decision on a third preference petition, does not explain the basis of the underlying denial. Nevertheless, the appellate decision states that the beneficiary in that case had a foreign degree evaluated as the equivalent of a U.S. baccalaureate degree in addition to the year's experience required by the labor certification. In the case before us, the petitioner does not have a degree which has been evaluated as the equivalent of an advanced degree in the United States. The 1991 decision involved a third preference visa petition for a beneficiary whose receipt of his Master's degree was simply delayed and who had a bachelor's degree plus five years of experience. In the case before us, the beneficiary had not completed the necessary course work for an advanced degree. In fact, the petitioner has submitted no evidence that the beneficiary ever received a degree after obtaining his two-year baccalaureate degree. Moreover, as stated above, the labor certification

in the case before us does not permit the substitution of a bachelor's degree plus five years of experience. The 1986 AAO decision involved a beneficiary who had a medical degree and a Master's degree. While the AAO accepted the evaluation's conclusion that the medical degree was an advanced degree, it also noted that the beneficiary had received a Master's degree. Once again, in the case before us, the beneficiary does not have any degree other than his two-year baccalaureate degree.

In light of the above, we concur with the director that that the beneficiary does not have the equivalent of a U.S. Master's degree. Thus, the beneficiary is not an advanced degree professional as defined in the regulations regardless of whether he meets the job requirements of the labor certification.¹

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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

¹ If we accept counsel's argument that by including the words "educational equivalent" the labor certification application permits individuals without an advanced *degree* as defined in the regulations, then the job itself does not require an advanced degree professional.