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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

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



04 NOV 2002

File: [Redacted] Office: VERMONT SERVICE CENTER Date:

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)

IN BEHALF OF PETITIONER:



*identifying data deleted to
prevent disclosure of
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 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.

We note that, simultaneously with the appeal, the petitioner filed a motion to reopen the director's decision, receipt number EAC 01 078 52697. This motion and its accompanying exhibits appear to be essentially identical to the concurrent appeal. Separate adjudication of both the appeal and the identical motion would be redundant. Because the petitioner has actively sought review of this matter by the Administrative Appeals Office ("AAO"), which has authority to review Service Center decisions, we consider the appeal to supersede the concurrent motion.

The petitioner provides software product development and consulting services. It seeks to employ the beneficiary permanently in the United States as a project manager 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, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify for the classification sought.

On appeal, counsel maintains that the beneficiary has earned college credits that exceed the requirements for a U.S. baccalaureate 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. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. 204.5(k)(2).

The approved labor certification, Form ETA-750 Part A, in the record indicates that the position requires four years of college; a bachelor's degree with a major in business administration; and six years of experience in the job offered or a related occupation.

Form ETA-750 Part B, the Statement of Qualifications of Alien, indicates that the beneficiary studied at the University of Delhi, earning a bachelor's degree in Commerce between September 1976 and April 1980, and a diploma in Marketing and Sales Management from June 1983 to May 1984. The Form ETA-750B thus appears to indicate four years of study leading up to the baccalaureate degree. University documentation, however, states that the petitioner was "examined in 1979, and found qualified for the degree of Bachelor of Commerce," with the degree presented in 1980.

An independent credential evaluation states, in pertinent part:

The BCom [Bachelor of Commerce] is a three-year full-time degree . . . and is equal to three years or 90 hours of coursework toward a Bachelor of Business Administration. . . .

The PG [Post-Graduate] Diploma requires the completion of a first degree for admission and represents a year of study on top of a prior degree. Together, the BCom and the Post-Graduate Diploma in Marketing represent the equivalent of a Bachelor of Business

Administration degree, major in Marketing, awarded by a [regionally accredited] university in the United States.

The director informed the petitioner “[t]he beneficiary does not hold a United States baccalaureate degree or a foreign equivalent degree as required by the ETA 750 submitted with this petition. A combination of education and/or experience is not sufficient to fulfill the degree requirement.” In response, counsel asserts that the petitioner has not attempted to represent a combination of education and experience as the equivalent of a bachelor’s degree. The petitioner submits a second credential evaluation report, and counsel contends that these reports confirm that the petitioner’s educational background is equivalent to a U.S. bachelor’s degree.

The second evaluation essentially agrees with the first one. It states that the petitioner’s Bachelor of Commerce degree “is equivalent to a three-year program . . . transferable to an accredited University in the United States,” and that the petitioner’s later diploma “is equivalent to a one-year program of academic studies in Marketing and Sales Management and transferable to an accredited University in the United States.” The evaluation concludes that the degree and the diploma, together, “are equivalent to a Bachelor Degree in Business Administration, Marketing and Sales Management from an accredited University in the United States.”

The director denied the petition, stating that a combination of two degrees, neither of which equates to a U.S. baccalaureate by itself, cannot be considered to be the joint equivalent of a U.S. baccalaureate. On appeal, the petitioner submits additional documents and, through counsel, contests the director’s finding.

The petitioner submits a letter from an administrative officer of the University of Delhi, indicating that the one-year marketing and sales management course “is a Post Graduate Course” for which a bachelor’s degree is a prerequisite. This document adds nothing of substance to the record; it shows only that the University of Delhi considers a bachelor’s degree from the University of Delhi to be a bachelor’s degree.

The petitioner also submits a clarification from one of the previously-cited evaluators, indicating that the “University of Delhi’s Curriculum in Science and Engineering [is] comparable to the Curriculum of US Universities. . . . [I]ts graduates are recognized . . . all over the world.” The evaluator adds that the beneficiary earned 90 credit hours during his three-year course of study, and another 36 hours during the later one-year course, which totals more than the 120-125 credits generally required for a U.S. baccalaureate.

Counsel submits summaries of prior appellate decisions, in which the AAO dismissed appeals for various deficiencies in the respective beneficiaries’ educational credentials. Counsel observes that those particular deficiencies are not present in the instant proceeding, the implication being that the petition should be approved. Counsel’s reasoning fails here because the AAO had never indicated that the grounds cited in the earlier decisions were the only possible grounds for dismissal.

Counsel maintains that the petitioner has amply demonstrated that the beneficiary “has the foreign equivalent of a Bachelor of Business Administration degree.” Counsel asserts “[t]here is no indication

in the regulations that combined education is not sufficient to fulfill the degree requirement.” We disagree with counsel’s reading of the regulations. 8 C.F.R. 204.5(k)(3)(i) states:

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The regulation at 8 C.F.R. 204.5(k)(2) defines “advanced degree” as “any United States academic or professional degree above that of baccalaureate. 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.”

The regulations do not simply require “the foreign equivalent of a United States baccalaureate degree.” The regulations plainly require a “United States baccalaureate degree or a foreign equivalent degree,” indicating that one single degree must be equivalent to a U.S. bachelor’s degree. Two separate degrees do not, together, constitute “a foreign equivalent degree.” The beneficiary does not possess any one degree that is, on its own, at least the equivalent of a U.S. baccalaureate degree.

We note that the petitioner, on the labor certification form, did not specify that the term “Bachelor degree” referred to a three-year Indian degree rather than a four-year U.S. degree, nor did the petitioner indicate that it would accept a combination of lesser degrees in lieu of a four-year bachelor’s degree. Rather, under “College Degree Required,” the petitioner simply wrote “Bachelor degree,” beside the requirement of four years of college education. Because the petitioner is a U.S. employer that submitted the Form ETA-750A to a U.S. government agency, describing a U.S. job opening, the term “Bachelor degree” presumptively refers to a U.S. bachelor’s degree, rather than a lesser foreign degree that happens to share that name.

The regulations plainly and repeatedly require “a foreign equivalent degree” in the absence of a U.S. baccalaureate. The beneficiary does not possess a foreign equivalent degree, and therefore the beneficiary does not qualify for the classification sought or (arguably) for the position as described on the labor certification form. Therefore, the petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.