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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: EAC-00-082-50468 Office: Vermont Service Center

Date: OCT 18 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, 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 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 or that he meets the requirements set forth on the labor certification.

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.

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 failed to submit the beneficiary's educational credentials in support of the petition. The director requested the beneficiary's diploma on August 30, 2000. In response, the petitioner submitted diplomas from the Institution of Engineers and the National Centre for Computing Techniques issued to "B. Ravi" and transcripts from both institutions issued to "Shri B. Ravi." The petitioner also submitted an educational evaluation from the Trustforte Corporation that provides:

The nature of the courses and the credit hours [at the Institution of Engineers] involved indicate that [the beneficiary] satisfied substantially similar requirements to the completion of three years of academic studies *leading to* a Bachelor of Science Degree in Civil Engineering from an accredited institution of higher education in the United States. . . .

The nature of the courses and the credit hours [at the National Centre for Computing Techniques] involved indicate that he satisfied substantially similar requirements to the completion of not less than one year of academic studies *leading to* a baccalaureate degree in Computer Science from an accredited institution of higher education in the United States.

Based on the reputations of the Institution of Engineers of India and the National Centre for Computing Techniques, 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 not less than one year of post-graduate coursework in Computer Science, it is the judgment of the Trustforte Corporation that [the beneficiary] attained the equivalent of a Bachelor of Science Degree in Computer Science 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 that was equivalent to a U.S. baccalaureate degree. On appeal, counsel argues that the regulations do not define "foreign equivalent degree," that the director arbitrarily and without explanation dismissed Trustforte's opinion on the matter, and that the Service should defer to educational evaluations in these cases.

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.

We do not find that the director arbitrarily dismissed Trustforte's opinion based on an undisclosed "standard" as to what constitutes a foreign equivalent degree. We find, as did the director, that a foreign equivalent degree is not an ambiguous term open to interpretation by "experts." The phrase clearly means a degree that is the equivalent of a U.S. baccalaureate degree. A combination of degrees that, 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. To reach this conclusion, we do not reject Trustforte's opinion. The letter from Trustforte does not state that either of the beneficiary's degrees standing alone is equivalent to a U.S. baccalaureate degree. In light of the above, 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 and does not meet the job requirements set forth on the labor certification.

Counsel also requests that if this office concurs with the director that the petition be approved in a lesser classification. Counsel has not provided any statute, regulation, or precedent decision that allows the Service to consider a petition under any classification other than the one under which it was filed. As such, we will not consider the beneficiary's eligibility under any other classification.

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.