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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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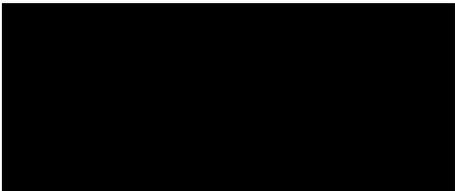
File: EAC 00 134 51130 Office: Vermont Service Center

Date: OCT 29 2002

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:



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 is a computer software services company. It seeks to employ the beneficiary permanently in the United States as an accountant 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. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner had failed to establish that the beneficiary meets the minimum requirement of a baccalaureate degree or its foreign equivalent.

On appeal, counsel states: "The record in this case clearly establishes that [the beneficiary] has the equivalent of a bachelor's degree."

Section 203(b) of the Act states, in pertinent part:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The Service regulation at 8 C.F.R. 204.5(k)(2) states:

Advanced degree means any United States academic or professional degree or a foreign equivalent 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The Service regulation at 8 C.F.R. 204.5(k)(3)(i) states:

(i) 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.

Counsel cites an evaluation report from Multinational Education and Information Services, Inc. The report offers the following analysis:

1. [The beneficiary] was awarded the degree of Bachelor of Commerce from the University of Bombay, India in 1984. This is equivalent to a three-year program of academic studies in business and transferable to an accredited university in the United States...
2. [The beneficiary] has completed the final examination of the Institute of Chartered Accountants of India in 1987. This is equivalent to over [sic] one-year program of academic studies in accounting and transferable to an accredited university in the United States.

[The beneficiary's] degree of Bachelor of Commerce and the completion of the final examination of the Institute of Chartered Accountants of India are equivalent to a bachelor degree in business and accounting from an accredited university in the United States.

The degree evaluation submitted implies that the beneficiary has the equivalent of a United States baccalaureate degree based on a combination of factors. This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an opinion is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm., 1988).

The relevant regulations, cited above, require an official academic record of a bachelor's degree. While experience can substitute for an advanced degree, there is no comparable provision in regard to the underlying bachelor's degree. If the beneficiary does not actually hold a bachelor's degree (or an equivalent degree from a foreign institution), the beneficiary cannot qualify as a member of the professions holding an advanced degree, regardless of how many additional educational certifications he has accumulated.

As stated in the regulations, the beneficiary must have a baccalaureate degree and five years of progressive experience in order to qualify as possessing the equivalent of an advanced degree. A bachelor's degree is generally found to require four years of education. See, e.g. Matter of Shah, 17 I&N Dec. 244, 245 (Comm. 1977). A beneficiary must first possess a foreign degree equivalent to a United States bachelor's degree in order to qualify for the visa classification based on a claim of a master's degree equivalency. Neither the statute nor the regulations allow an alien to establish that he has the equivalent of a bachelor's degree based on work experience or a combination of lesser educational degrees and certifications, as in the present case.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.