



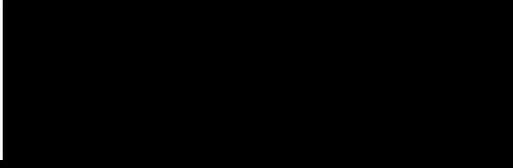
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U.S. Department of Justice

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: [Redacted] Office: Nebraska Service Center

Date: 17 SEP 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, 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 is an information systems consulting firm that seeks to employ the beneficiary as a consultant. As required by statute, the petition was accompanied by certification from the Department of Labor. The director found that the beneficiary does not possess the minimum qualifications for the job offer described in the labor certification.

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

(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 director denied the petition because "the petitioner has not demonstrated that the beneficiary has met the minimum requirements" for the position offered. Counsel argues, on appeal, that the beneficiary does qualify for the job offered and therefore the petition should be approved.

The Form ETA-750 application for labor certification indicates that the position offered requires at least four years of college education, culminating in a bachelor's degree in Computer Science, and five years of experience, or a master's degree and three years of experience.

The Form ETA-750B Statement of Qualifications indicates that the beneficiary earned a bachelor's degree following two years of study at Lucknow University from July 1980 to June 1982. An official of the petitioning company states that the beneficiary "possesses the equivalent of a Bachelor[']s degree with a major in Computer Information Systems. His formal university education is the equivalent of an Associate's degree. However, based on his extensive experience in the field," the beneficiary possesses the functional equivalent of a bachelor's degree. The petitioner cites an independent evaluation of the beneficiary's educational and professional credentials.

The evaluation reads, in pertinent part:

I conclude that [the beneficiary] has achieved, through his education and work experience, the equivalent of a bachelor's degree with a major in Computer Information Systems. . . .

The Bachelor of Science degree he received at the University of Lucknow is the equivalent of an Associate of Arts (60 semester credit hours) in the United States. [The beneficiary] has seven years of documented professional experience in the computer field, which, following the three-for-one rule INS formula, is equivalent to 70 semester credit hours of undergraduate study. . . . [The beneficiary's] education and work experience exceed the credit hour requirements for a U.S. bachelor's degree in Computer Information Systems.

The regulation at 8 C.F.R. 204.5(k)(2) states, in pertinent part:

Advanced degree means 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.

Profession means one of the occupations listed in section 101(a)(32) of the Act, as well as an occupation for which a United States Baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The Service's regulation at 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.

Pursuant to the above regulations, an alien who lacks a master's degree can establish the equivalent through post-baccalaureate experience. There is no provision, however, for an alien who lacks a bachelor's degree to establish the equivalent through a combination of a lesser degree and employment experience. The above regulation specifically requires "[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree." It is clear from this wording that the alien must possess an actual degree that is equivalent to a U.S. baccalaureate. Work experience cannot be documented via "an official academic record," and a combination of education and experience is not a "foreign equivalent degree."

The "three for one" formula cited in the evaluation does not apply to this immigrant classification; it is used in regard to a nonimmigrant classification. 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. See Matter of Sea, Inc., 19 I&N Dec. 817 (Commr. 1988).

If the beneficiary does not possess an actual degree that is at least equivalent to a bachelor's degree from a U.S. university, then the beneficiary does not meet the minimum requirements of the position offered. The ETA-750 clearly indicates that the position requires a minimum of four years of college education, a requirement the beneficiary cannot meet with his two-year degree. The form does not indicate that the petitioner will accept an associates' degree and six years of experience in lieu of a bachelor's degree.

Counsel argues, on appeal, that the petitioner is willing to accept the equivalent of a bachelor's degree. Counsel asserts that the petitioner "should have included the word 'equivalent' on the ETA 750 itself. However, Petitioner does not accept that its visa petition should be denied for this failure. Such a conclusion would, in essence, constitute form over substance and would lead to an unreasonable and unjust result in this case." Counsel's logic is not persuasive. If the petitioner will accept a candidate who does not hold an actual bachelor's degree, then the position does not meet the regulatory definition of a profession because it does not require, at a minimum, a bachelor's degree. If the petitioner will accept an associate's degree, it inevitably follows that the occupation does not require a member of the professions holding an advanced degree, and the petitioner should seek a lesser immigrant classification on the beneficiary's behalf.¹

If, conversely, we were to accept counsel's reasoning that the Service should accept an associate's degree plus experience as the equivalent of a bachelor's degree, then there would be nothing to prevent the service from recognizing post-secondary experience as equivalent to an associate's degree, and so on. In order to qualify for a degree-based immigrant classification, an alien must possess some minimal college degree. The regulations fix this minimum at the baccalaureate level, and it is neither unfair nor arbitrary to deny a petition filed on behalf of an alien who has not attained that minimum level of education. The petition is unapprovable on its face. The petitioner's willingness to accept a worker without a bachelor's degree does not in any way obligate the Service to make a similar concession in defiance of its own 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.

¹ Service records indicate that the petitioner has done exactly that.