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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

[Redacted]

File: [Redacted] Office: Nebraska Service Center Date: **SEP 26 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:  
[Redacted]

**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 is a software consulting company. It seeks to employ the beneficiary permanently in the United States as a senior software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2), as 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. The director also noted the absence of documentation pertaining to the petitioner's ability to pay the beneficiary's wage.

On appeal, counsel argues that the beneficiary's educational background "is the equivalent of a bachelor's degree."

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

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage. In appropriate cases, additional evidence, such as profit/loss statements, bank account records, or personnel records, may be submitted by the petitioner or requested by the Service.

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.

On appeal, the petitioner submits a new evaluation report from the Trustforte Corporation. The report offers the following analysis:

The nature of the courses and the credit hours involved indicate that [the beneficiary] satisfied requirements equivalent to the completion of three years of academic studies toward the attainment of a Bachelor of Business Administration Degree from an accredited institution of higher education in the United States.

Thereafter, [the beneficiary] completed classes and examinations and was admitted as an Associate Member of both The Institute of Chartered Accountants of India and The Institute of Cost and Works Accountants of India... The completion by [the beneficiary] of the Examinations of The Institute of Cost and Works Accountants of India and The Institute of Chartered Accountants of India and his admission as an Associate Member of the Institutes is analogous to the completion of concentrated coursework in accounting at the baccalaureate level.

The degree evaluation submitted on appeal 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 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 certifications he has accumulated.

As stated in the regulations, the beneficiary must have a baccalaureate degree and five years of 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 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 provide that the equivalent of a bachelor's degree will suffice, whether the equivalency is based on work experience or a combination of educational certifications and memberships, as in the present case.

The director's decision raised an additional issue that is not addressed on appeal. The director acknowledged the petitioner's submission of bank statements, but noted the absence of "audited financial statements, federal tax returns, or annual reports" as required pursuant to 8 C.F.R. 204.5(g)(2). On appeal, the petitioner does not provide this evidence, nor has counsel offered arguments in response to the director's finding.

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.