

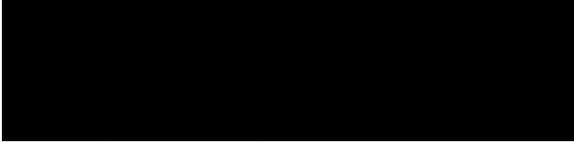


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U.S. Department of Justice
Immigration and Naturalization Service

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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: 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:



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 development company. It seeks to employ the beneficiary permanently in the United States as a software quality test 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.

On appeal, counsel states: "The alien has the required [bachelor's] degree in that he has six years of higher education, which was not clear based on the original petition."

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(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 Foundation for International Services, Inc. The report offers the following analysis:

1. Copy of the diploma from the University of Calcutta in Calcutta, India certifying that the [beneficiary] was awarded the degree of Bachelor of Commerce (Three-year Course)... This document... is equivalent to three years of university-level credit from an accredited college or university in the United States...
2. Copy of the Certificate of Membership from the Institute of Chartered Accountants of India certifying that [the beneficiary] was admitted as an Associate on September 11, 1990. This document which was dated September 30, 1990 was signed by the Secretary and the President and in conjunction with #1 above is equivalent to a bachelor's degree in accounting from an accredited college or university in the United States.

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 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 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 lesser educational certifications and diplomas, 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.