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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass, 3/F  
Washington, D.C. 20536



File: EAC 02 083 54893 Office: VERMONT SERVICE CENTER

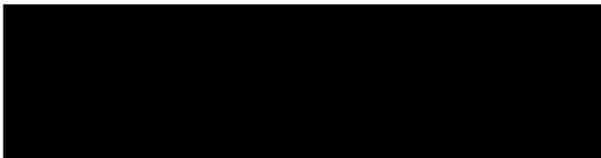
Date: **AUG 18 2003**

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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office 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 a computer consulting and software development company. It seeks to employ the beneficiary as a programmer analyst. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not meet the minimum requirements for the job offered.

On appeal, the petitioner's counsel contends that the beneficiary has a foreign degree equivalent to a bachelor's degree from an accredited United States educational institution.

In relevant 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.

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

An advanced degree is a U.S. 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.

(Emphasis added).

A three-year bachelor's degree will not be considered to be a "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree. *Id.* at 245.

According to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. Following twelve years of primary and upper primary school, a bachelor's degree in the arts, commerce, or the sciences may be earned after three years of higher education. A bachelor's degree in a professional field of study, such as agriculture, dentistry, engineering, pharmacy, technology, and veterinary science, generally requires four years of education. *See generally* Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework – Degree Structure*, (last updated October 1, 2001), available at <http://www.education.nic.in/htmlweb/higedu.htm>. If supported by a proper academic credentials evaluation, a four-year baccalaureate degree from India could reasonably be considered to be the "foreign equivalent degree" to a United States baccalaureate degree.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 6, 2001. The Application for Alien Employment Certification Form ETA-750A, indicates that the applicant for the position of programmer analyst must have six years of college, a master's degree or equivalent with a major field of study in science, commerce, or computer science, one year of experience as a programmer analyst or one year of experience in a related occupation. Block 15 of the ETA 750A states that a bachelor's degree with at least five years of progressive experience can be substituted for a master's degree.

Together with financial documentation related to the petitioner's ability to pay the beneficiary's salary and several reference letters, the petitioner initially submitted the beneficiary's Bachelor of Commerce degree awarded March 4, 1992 from the University of Bombay, India, a 1991 grade transcript showing the beneficiary received passing marks at the University of Bombay, four copies of transcripts from the National Institute of Information Technology (NIIT) indicating that the beneficiary successfully completed computer training courses in 1991, 1992, and 1994, and an academic evaluation dated December 21, 2001 from The Trustforte Corporation. This evaluation states that the beneficiary's degree from the University of Bombay is the equivalent to the "completion of three years of academic studies leading to a baccalaureate degree from an accredited institution of higher education in the United States." The evaluation asserts that when combined with the beneficiary's NIIT baccalaureate level courses, the beneficiary has completed the United States equivalent of a Bachelor of Science degree in management information systems.

The director requested further evidence from the petitioner as to whether the beneficiary's formal education represents the foreign equivalent of a United States baccalaureate degree. The petitioner responded with another submission of The Trustforte Corporation's December 2001 academic evaluation and argued that the beneficiary's completion of courses at both institutions fulfills the regulatory requirements of a foreign equivalent degree.

In denying the petition, the director found that the beneficiary's combination of documents representing his studies at the University of Bombay and NIIT does not satisfy the regulatory requirement for a "foreign equivalent degree." We concur.

On appeal, counsel notes that the beneficiary has over eight years of progressive experience in information technology and re-submits The Trustforte Corporation's academic evaluation. He contends that a three-year college degree followed by one year of college level education towards a master's degree or a three-year college degree followed by one year of college level study at a government recognized institution both equate to a four year baccalaureate degree from the United States. We do not find this argument persuasive.

*Matter of Sea Inc.*, 19 I&N 817 (Comm. 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.

As noted previously, the beneficiary must have a *degree* that is the equivalent of a United States baccalaureate degree. (Emphasis added). There is no provision in the statute or the regulations that would allow a beneficiary to qualify for an employment-based visa under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. A combination of degrees, certificates or diplomas, which, when taken together, equals the same amount of coursework required for a United States baccalaureate degree, does not meet the regulatory requirement of a foreign equivalent degree. Whether the equivalency of a bachelor's degree is based on work experience alone or on a combination of multiple lesser degrees or certificates, counsel's analysis results in the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree."

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses a foreign equivalent degree to a United States baccalaureate degree. As such, the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree.

The burden of proof in these proceedings rests solely 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.