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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-01-086-51236 Office: Vermont Service Center

Date: **AUG 19 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)

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 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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting business. It seeks to employ the beneficiary permanently in the United States as a programmer analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess the equivalent of an advanced degree as he did not hold a “United States baccalaureate degree or a foreign equivalent degree.”

On appeal, counsel asserts that the beneficiary’s education in the aggregate is equivalent to a United States baccalaureate degree.

In pertinent 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. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). Regarding the “equivalent” of an advanced degree, the regulations state: “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.” *Id.*

The beneficiary received a Bachelor of Science degree from Bharathidasan University in December 1990 after three years of study. Thus, the beneficiary’s degree was apparently awarded in accordance with India’s “10+2+3 Scheme.” The original petition was accompanied by a credentials evaluation from Education Evaluators International, Inc. The letter evaluates the petitioner’s three-year degree as follows:

Due to the very specialized nature of the program, [the beneficiary] would have completed all of the theoretical and practical application of specialized knowledge required for the functional equivalent of a major in Computer Science for a Bachelor of Science degree awarded by regionally accredited colleges and universities in the United States.

The director determined that this evaluation was insufficient and requested an evaluation of the beneficiary’s formal education only. The petitioner submitted a new evaluation from International Credentials Evaluation and Translation Services (ICETS). In evaluating the beneficiary’s Bachelor of Science degree, the evaluator stated:

Calculations based on course duration and composition in the Bachelor of Science program indicate that [the beneficiary] satisfied similar requirements 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.

After considering the beneficiary's university studies, the evaluator evaluated the beneficiary's additional training that was received after his bachelor's degree. In 1991, the beneficiary received a "diploma" in Computer Science from Apple House. The evaluator referenced this diploma as awarded in 1990 by Head Computer Education. The evaluator did not state whether the beneficiary's additional training was received at accredited institutions of higher education in India, asserting instead that the program significantly parallels "those parameters upheld by accredited colleges and universities of precedent in the United States." Based on the record of proceeding, the beneficiary appears to have received the additional training through a technical institute.

Based on the beneficiary's combined education and training, the evaluator concluded that the beneficiary "satisfied similar requirements to the completion of a Bachelor of Science Degree in Computer Science from an accredited institution of tertiary education in the U.S."

The director concluded that the beneficiary did not have the required baccalaureate degree or its foreign equivalent degree.

On appeal, counsel asserts that the petitioner's education in the aggregate is equivalent to a U.S. baccalaureate degree. In support of this assertion, counsel submits a letter from the Regional Manager of Apple House asserting that their 12 month training course is "at least parallel to those college level courses offered in the United States," and a letter from William Edelson of the Computer Science Department at Long Island University, asserting that the courses at Apple House "are sufficiently equivalent to bachelor's level courses in Computer Science at an accredited institution of tertiary education in the United States."

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

First, a three-year bachelor's degree will not be considered to be the "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).

Second, the beneficiary must have a degree that is the equivalent of a U.S. baccalaureate degree. A combination of degrees that, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree does not meet the regulatory requirement of a foreign equivalent degree.

To expand on our reasoning, in 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (now the Bureau), responded to

criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history . . . indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. Although the preamble to the publication of the final rule specifically dismissed the option of equating "experience alone" to the required bachelor's degree, the same reasoning applies to accepting an equivalence in the form of multiple lesser degrees, professional training, incomplete education without the award of a formal degree, or any other level of education deemed to be less than the "foreign equivalent degree" to a United States baccalaureate degree. Whether the equivalency of a bachelor's degree is based on work experience alone or on a combination of multiple lesser degrees, the analysis results in the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. As noted in the federal register, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor's degree will qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience.

In light of the above, we concur with the director that that the beneficiary does not have the equivalent of a U.S. baccalaureate degree. As such, the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree. Thus, the beneficiary is not an advanced degree professional as defined in the regulations.

The denial of this petition does not bar the filing of a new petition on behalf of the beneficiary under section 203(b)(3) of the Act as a skilled worker with more than two years of training and experience.

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.