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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass Ave, 3rd Floor
425 I Street N.W.
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: DEC 23 2003

IN RE: Petitioner:
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]

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 Citizenship and Immigration Services (CIS) 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 
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 Administrative Appeals Office (AAO) 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 an alien of exceptional ability and/or a member of the professions holding an advanced degree. As indicated on the Immigrant Petition for Alien Worker, Form I-140, the petitioner, a computer consulting company, seeks to employ the beneficiary as a senior consultant. The record contains an approved labor certification.

The director denied the petition after determining that the beneficiary did not qualify for classification as an alien of exceptional ability or as a member of the professions holding an advanced degree. The director noted that the petitioner had not made any representations that the beneficiary was an alien of exceptional ability, and specifically found that the petitioner had not established that the beneficiary had been awarded a U.S. baccalaureate or a foreign equivalent 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. The regulation at 8 C.F.R. § 204.5(k)(2) defines advanced degree:

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.

As the beneficiary possesses a foreign three-year bachelor's degree and at least five years progressive experience in his specialty, the sole issue in this proceeding is whether the petitioner's degree may be considered "a foreign equivalent degree" to a United States baccalaureate degree. If not, the beneficiary does not have the equivalent of an advanced degree, and is not eligible for the visa classification.

The beneficiary received a Bachelor of Science degree from the University of Kerala, awarded in 1981 after three years of study. The original petition was accompanied by a credentials evaluation by A.E.S.F., Inc. In evaluating the beneficiary's Bachelor of Science degree, the evaluator stated:

[The beneficiary] attended the Bachelor of Science degree program at the College of Science of University of Kerala, Trivandrum, India, from 1978 to 1981. The College of Science of Osmania University is accredited (recognized) by the AICE (All India Council for Education). In order to be

accepted into this program, applicants must have graduated from senior high school.

Upon completion of all of the academic requirements set forth for the Bachelor of Science degree program at the College of Science of University of Kerala by the All India Council for Education, [the beneficiary] graduated with the Bachelor of Science degree in April 1981.

After considering the beneficiary's university studies, the evaluator went on to analyze the beneficiary's additional education received after obtaining the 1981 degree. In 1983, the beneficiary received a "Post-graduate Diploma in Computer Science degree" from the Datamatics Institute of Management in 1983 after approximately 18 months of study. Based on the beneficiary's combined education and training, the evaluator concluded that the beneficiary "achieved the equivalent of a Bachelor of Science Degree in Computer Information Systems, at a regionally accredited institution in the United States." We must note the reference to "Osmania University" in the evaluator's report as there is no evidence in the record that the beneficiary attended this university. Clearly, such a mistake calls into question the veracity and accuracy of the entire report. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

In response to a request for additional information, the petitioner submitted a second credentials evaluation report. The second evaluation, conducted by Dr. Abhi Pandya of Florida Atlantic University, used virtually identical language to the evaluation made by A.E.S.F., Inc. to determine that the beneficiary "achieved a Bachelor of Science Degree in Computer Information Systems, at a regionally accredited institution in the United States."

We note that although CIS is not bound by advisory opinions, it may, in its discretion, use as advisory opinions statements submitted as expert testimony. Where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In the present matter, we find one of the evaluations to contain a critical error and find both evaluations to be discredited by the information from the government of India discussed below. As such, the evaluations are deemed to be less than probative in evaluating the beneficiary's foreign education.

On appeal, counsel asserts first that the beneficiary's "combined academic coursework and background was equivalent to a U.S. Bachelor's Degree in Computer Information Systems." Counsel also argues that CIS regulations and past practices make provisions for such an equivalency and submits questions and answers from a 1999 liaison meeting with the Nebraska Service Center, minutes from a 1997 joint CIS and American Immigration Lawyers' Association (AILA) meeting and past AAO decisions in similar cases.

We are not persuaded by counsel's arguments. The regulations contain no such equivalency provision. An alien who holds no advanced degree can establish equivalency through a bachelor's degree and post-baccalaureate experience, but there is no such comparable provision for an alien with no bachelor's degree. The regulation at 8 C.F.R. § 204.5(k)(3)(i) requires evidence of "[a]n official academic record" of either "a United States advanced degree or a foreign equivalent degree" or "a United States baccalaureate degree or a foreign equivalent *degree*" (emphasis added).

Further, precedent decisions establish that a three-year bachelor's degree cannot be considered 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). 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. After 12 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*, available at <http://www.education.nic.in/htmlweb/higedu.htm> (last updated October 1, 2001; printed copy incorporated into the record of proceeding). If supported by a proper credentials evaluation, a four-year baccalaureate degree from India may be "a foreign equivalent degree" to a United States baccalaureate degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah* at 245.

Based on the same reasoning, the beneficiary's three-year Bachelor of Science degree from the University of Kerala will not be considered the "foreign equivalent degree" to a United States baccalaureate degree. A combination of foreign degrees, none of which is equivalent to a U.S. baccalaureate, cannot in the aggregate form a single foreign equivalent degree.

On appeal, counsel relies on a letter dated January 7, 2003, from Mr. Efren Hernandez III, Director of the Business and Trade Services Branch of CIS's Office of Adjudications to argue that the beneficiary's combined education is equal to a United States baccalaureate. The subject of the letter is whether a "foreign equivalent degree" must be in the form of a single degree or whether the beneficiary may satisfy the requirement with multiple degrees.

We do not find the letter from the Office of Adjudications to be applicable to the facts of this case. The succinct response of Mr. Hernandez specifically refers to "the foreign equivalent advanced degree" as the point of concern, rather than the phrase "United States baccalaureate degree or a foreign equivalent degree." Accordingly, the response appears to specifically address the phrase "foreign equivalent degree" as it relates to the definition of advanced degree at 8 C.F.R. § 204.5(k)(2): "'Advanced degree' means any United States academic or professional degree or a foreign equivalent degree above the baccalaureate level." Mr. Hernandez's response is reasonable when considered in the context of a "foreign

equivalent degree" to a United States advanced degree; by definition, an advanced degree is a degree above the baccalaureate level, thereby requiring multiple degrees.

If applied to the phrase "United States baccalaureate degree or a foreign equivalent degree" contained at 8 C.F.R. § 204.5(k)(2), the letter's reasoning would lead to results directly contrary to the regulations, statute, and the intent of Congress. In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, legacy Immigration and Naturalization Service (legacy INS), 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, legacy INS 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 [now CIS] 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).

The statute and the regulations do not allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must first possess a single degree that is "a 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 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.

Even were we to find the letter to be relevant to this case, the Office of Adjudications letter is not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000)(copy incorporated into the record of proceeding). Similarly, the AAO is not bound by minutes from liaison meetings and by non-precedent decisions.

Based on the submitted evidence, the petitioner has not established that the beneficiary possesses a United States Master of Science degree or a foreign equivalent degree. Nor does the beneficiary possess the minimum alternate qualifications, a Bachelor of Science degree with five years of experience, as the beneficiary's three-year Bachelor of Science degree is not a "United States baccalaureate degree or a foreign equivalent degree." Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree.

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.