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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: EAC-00-133-50713

Office: Vermont Service Center

Date: FEB - 4 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 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, Vermont Service Center, and is now before the Associate Commissioner for Examinations 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 seeks to employ the beneficiary as a senior software engineer. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify as an advanced degree professional.

On appeal, counsel argues that the beneficiary has the equivalent of an advanced degree and submits new evaluations of the beneficiary's credentials.

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 U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level.

8 C.F.R. 204.5(k)(2) permits the following substitution for an advanced degree:

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.) The petitioner claims that the beneficiary has the equivalent of a baccalaureate degree plus at least five years of progressive experience. The petitioner initially submitted the beneficiary's Bachelor of Science degree issued by Bharathiar University and a "post graduate diploma" issued by the National Institute of Information Technology (NIIT). The transcript for the beneficiary's studies at Bharathiar University reveals that she obtained her degree after six semesters and the diploma from NIIT reveals that this was a one-year program. The petitioner also submitted an evaluation of the beneficiary's education credentials from Global Education Group, Inc. The evaluation, which purports to use "the three for one formula instituted by INS," concludes that the beneficiary has "the equivalent of completion of three years of undergraduate study in Mathematics and related subjects at a regionally accredited university in the United States and completion of one year of post-secondary study in Computers at a vocational institution in the United States." The evaluation acknowledges that a U.S. baccalaureate degree in Management Information Systems requires four years. The evaluation concludes that the beneficiary's education in combination with her six years of experience is equivalent to a U.S. baccalaureate degree.

In response to the director's request for an evaluation that only considered the beneficiary's education, the petitioner submitted a new evaluation from the Trustforte Corporation. This evaluation concludes that the beneficiary's education at Bharathiar University "satisfied substantially similar requirements to the completion of academic studies *leading to* a Bachelor of Science Degree from an accredited institution of higher education in the United States." (Emphasis added.) The evaluation continues:

Based on the reputations of Bharathiar University and the National Institute of Information Technology, the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, it is my judgment that [the beneficiary] attained the equivalent of a Bachelor of Science Degree in Computer Science from an accredited US institution of higher education.

In his final decision, the director concluded that the beneficiary's degree equated to three years of academic studies at an accredited university in the United States and that a combination of education could not satisfy the baccalaureate or foreign equivalent degree requirement.

On appeal, counsel argues that precedent decisions permit the combination of education and experience to equate to a baccalaureate degree.¹ Counsel references *Matter of Yaakov*, 13 I&N Dec. 203 (BIA 1969); *Matter of Devnanai*, 11 I&N Dec. 800 (BIA 1966); *Matter of Bienkowski*, 12 I&N Dec. 17 (BIA 1966); *Matter of Arjani*, 12 I&N Dec. 649 (BIA 1967); and *Matter of Sea, Inc.*, 19 I&N 817 (Comm. 1988). In addition, the petitioner submits a new evaluation of the beneficiary's credentials from A&M Logos International, Inc.

The new evaluation from A&M Logos International provides similar information to the two earlier evaluations, concluding that the beneficiary's combined education is equivalent to a U.S. Bachelor of Science Degree in Mathematics with two majors, mathematics and computer science.

The issue in all of the decisions that counsel cites and submits regarding the combination of education and experience involve third preference petitions and relate to whether or not the beneficiary in those cases was a member of the professions. These cases admittedly conclude that an alien who holds a bachelor's degree or a combination of education or education and experience equivalent to a bachelor's degree can qualify as a professional. In the instant petition, however, the petitioner filed a second preference petition in behalf of the beneficiary and the issue is whether the beneficiary is an advanced degree professional.

In addition, *Matter of Sea, Inc.*, *supra*, 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 quoted above, 8 C.F.R. 204.5(k)(2) provides that the only substitution for an advanced degree is a *degree* that is the equivalent of a U.S. baccalaureate degree plus five years of experience. A

¹ Counsel also argues that the beneficiary had the necessary work experience at the time of filing. We do not read the director's reference to *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971) as a conclusion that the beneficiary did not have at least five years of work experience at the time of filing.

combination of degrees which, 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. 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 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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.