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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 01 226 56910 Office: Vermont Service Center

Date: FEB 05 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 with an advanced degree. The petitioner, an information technology firm, seeks to employ the beneficiary permanently in the United States as a senior systems analyst. 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 a member of the professions holding an advanced degree or its equivalent, and thus the beneficiary does not qualify for the job offered.

Section 203(b)(2)(A) of the Act states in pertinent part:

[v]isas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees . . . whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

8 C.F.R. § 204.5(k)(2) defines an 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.

The Form ETA-750A labor certification application submitted with the petition indicates that the position requires a master's degree in computer science/math or a related field and two years of experience as a software engineer. A notation in block 15 of the form indicates that the petitioner "[w]ill accept Bachelors [sic] and 5 + years of experience in lieu of Masters & 2 yrs. of experience. 18 months experience in visual basic, MS-Access and SQL server."

The petitioner claims that the beneficiary has the equivalent of an advanced degree based on a combination of foreign degrees and the beneficiary's experience. The beneficiary claims the following employment experience on Form ETA-750B:

Software programmer	NICCO Infotech Inc. (now known as Mindtek Consulting)	Apr 1999-present
Software officer	NICCO Corporation Ltd., India	Feb 1997-Mar 1999
Trainee/Promoted to	Hindustan Thompson	Aug 1993-Jul 1996

Art Studio Exec.
[worked on in-house software]

The petitioner submitted the beneficiary's 1993 bachelor of science degree from the University of Calcutta, a post-graduate diploma in "operations management" issued by the Indira Gandhi National Open University in December 1998, a diploma in "software exports" issued by the National Institute of Information Technology (NIIT) in May 1999, and a certificate for a "Visual Basic 6.0" course issued in March 1999. The petitioner also submitted an academic evaluation from the Trustforte Corporation. The evaluation concludes that the beneficiary's three year study at the University of Calcutta combined with her postgraduate diploma from Indira Gandhi National Open University is the equivalent of a U.S. bachelor of science degree in management science. It also adds that the combination of the petitioner's education at NIIT including one year of professional practice, together with the completion of a bachelor of science degree from the University of Calcutta, is the U.S. equivalent of a bachelor of science degree in computer science.

The petitioner also submitted letters documenting the beneficiary's work experience and copies of financial information supporting the petitioner's ability to pay the beneficiary's wage.

In denying the petition, the director found that the petitioner had established that the beneficiary holds the equivalent of a U.S. baccalaureate in management science, but that the beneficiary had failed to complete at least five years of post-baccalaureate progressive experience prior to the priority date of September 19, 2000. We concur that the petitioner has not established that the beneficiary is an advanced degree professional, but reach that conclusion because the petitioner does not have the equivalent of a U.S. baccalaureate degree.

At the outset, we note that the Service uses evaluations by a credentials evaluation organization as an advisory opinion only. *See Matter of Sea, Inc.*, 19 I&N 817 (Comm. 1988). In this case, the record does not indicate that the beneficiary holds any degree that is equivalent to a U.S. baccalaureate degree. 8 C.F.R. § 204.5 (k)(2) stipulates that an employment-based visa petition for an advanced degree professional may substitute "*a foreign equivalent degree*" (emphasis added) for a U.S. baccalaureate degree. While the regulations specify that a certain combination of experience and a bachelor's degree can be considered equivalent to a master's degree, there is no comparable provision to substitute a combination or series of foreign degrees or experience which, in aggregate, amounts to the equivalent of a U.S. baccalaureate degree.

On appeal, the petitioner contends that the beneficiary's educational credentials have been established and submits two additional affidavits to supplement previous documentation addressing the duration and scope of the beneficiary's employment.

As noted above, because the beneficiary's education is not the equivalent of a U.S. baccalaureate, her subsequent work experience, regardless of evidentiary quality, cannot be considered to be post-baccalaureate experience equivalent to an advanced degree. Thus, the beneficiary is not an advanced degree professional as defined in the regulations.

ORDER: The appeal is dismissed.