

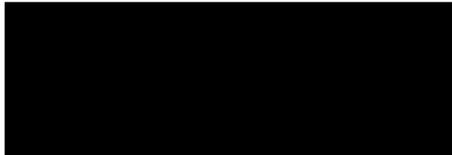


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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536



File: EAC 01 121 53274 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 seeks to employ the beneficiary as a 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 an advanced degree professional.

On appeal, the petitioner's counsel contends that the beneficiary has a foreign degree equivalent to a bachelor's degree from an accredited U.S. college and over six years post-baccalaureate experience.

In pertinent part, section 203(b)(2)(A) 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.

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 August 17, 2000. The Application for Alien Employment Certification Form ETA-750A indicates that the applicant for the position of systems analyst must have a "master's or equivalent" in computer science, engineering or a related field.

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 initially submitted the beneficiary's bachelor of science diploma in technology issued December 16, 1995 by Nagarjuna University, India,¹ five transcripts of grades received in 1993 and 1994 from Nagarjuna University, a post-graduate diploma in computer science issued in August 1993 by "Zen Computers," and a "certificate of excellence" issued by Microsoft. Along with three letters from two former employers and the petitioner's financial information, the petitioner submitted an academic evaluation dated July 28, 2000 from the Multinational Education & Information Services, Inc. This evaluation states that the beneficiary's degree from Nagarjuna University was awarded in 1994, and is "equivalent to four years of academic studies in Electronics & Communications Engineering and transferable to an accredited university in the United States." Following a summary of the beneficiary's experience, the

¹ The diploma states that the beneficiary passed the second-class examination in March 1994, but the diploma was not issued until December 16, 1995.

evaluation concludes that the beneficiary's combined education and experience are the equivalent of a bachelor's degree in electronics engineering and a master's degree in computer science.

The director requested further evidence from the petitioner in the form of a detailed evaluation of the beneficiary's formal education, as well as statements from the beneficiary's employers documenting his duties and duration of employment with them.

In response, the petitioner submitted a letter from the beneficiary's employer, Dataexecute, and two additional evaluations from the Multinational Education & Information Services, Inc. Both evaluations are dated October 17, 2001, and purport to separately evaluate the beneficiary's formal education and a combination of his education and experience. Both evaluations state that the beneficiary's bachelor of technology degree from Nagarjuna University was awarded in 1994, rather than 1995, and is the "equivalent to three years of academic studies in Electronics and Communications Engineering and transferable to an accredited University in the United States." One of the evaluations summarizes the beneficiary's combined formal training, including his post-graduate diploma from Zen Computers and his Microsoft certificate, and concludes that the beneficiary's bachelor of technology degree is equivalent to a U.S. bachelor's degree in electronics engineering. The other evaluation echoes the previous evaluation dated July 2000, and again concludes that the beneficiary's education and experience are the equivalent of a U.S. bachelor's degree in electronics engineering and a master's degree in computer science.

In denying the petition, the director concluded that the beneficiary did not have the equivalent of a U.S. bachelor's degree. He also determined that even if the evidence established that the beneficiary's formal education were sufficient to meet the requirement of a U.S. baccalaureate degree or its foreign equivalent, the petitioner had not shown that the beneficiary had completed five years of post-baccalaureate experience.

On appeal, the petitioner's counsel asserts that the director failed to recognize the evidence contained in the academic evaluations dated October 17, 2001. Counsel also submitted copies of previous employers' letters, a copy of an INS H-1B notice of approval, and copies of payroll records from Soft Alliance LLC, one of the beneficiary's previous employers.

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 above, the beneficiary must have a degree that is the equivalent of a U.S. baccalaureate degree. A combination of degrees, certificates or diplomas, 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 this case, we note that the academic evaluations dated October 17, 2001 and July 28, 2000 are written by the same author, but are inconsistent with

each other. The earlier evaluation states that the beneficiary completed a four-year course of study at Nagarjuna University, while the subsequent evaluation reports that his course of study was three years. The October 17, 2001 evaluation also appears to consider all of the beneficiary's certificates and diplomas from outside sources in concluding that his bachelor of technology degree is the equivalent of a U.S. baccalaureate degree, and states that his degree from Nagarjuna University was awarded in 1994, rather than in 1995 as the diploma specifies. Additionally, although the beneficiary's transcripts include a notation indicating that he may have been enrolled in a four-year course, the transcripts submitted only cover two years. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses 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.

We also agree with the director that even if the petitioner's evidence had indicated that the beneficiary received a bachelor's degree from Nagarjuna University equivalent to a U.S. baccalaureate degree, the record does not indicate that the beneficiary completed the necessary five years progressive post-baccalaureate experience by the filing date of August 17, 2000. The two letters submitted from KPIT Systems Ltd., show that the beneficiary was employed there from July 1, 1994 until February 3, 1997 as a programmer/electronics engineer. INDIGO Rdbms Research & Development documents the beneficiary's employment as a software programmer from January 1998 to March 6, 1999. A letter from Dataexecute Corporation dated October 23, 2001 states that the beneficiary continuously worked there as a programmer analyst from March 2000. Taken together, the beneficiary's cumulative work experience falls short of the required five years.

As noted above, the petitioner also submitted copies of payroll records from Soft Alliance LLC, indicating that he was employed there from August 9, 1999 to January 21, 2000, as well as a copy of an INS approval notice of a petition for a nonimmigrant worker listing Soft Alliance LLC as the petitioner. The beneficiary's occupation during his employment with Soft Alliance LLC is not identified by any submitted evidence, although the ETA-750B, signed by the beneficiary, indicates that he was employed as a programmer analyst. This does not satisfy the evidentiary requirements set forth in 8 C.F.R. § 204.5(k)(3). We note that simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The evidence fails to establish that the beneficiary holds any degree that is equivalent to a U.S. baccalaureate degree. As such, the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree. Further, the record does not contain independent evidence that the beneficiary completed five years of post-baccalaureate progressive work experience prior to the filing date.

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.