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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



FEB 14 2003

File: EAC 01 089 52156 Office: Vermont Service Center Date:

IN RE: Petitioner: [Redacted]
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:



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 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 a member of the professions with an advanced degree. The petitioner seeks to employ the beneficiary as a 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, 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 eight years progressive 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 July 13, 2000. The Application for Alien Employment Certification Form ETA-750A, blocks 14 and 15, indicates that the applicant for the position of software engineer must have a master's in computer science, engineering or math and one year of experience in any computer related profession, or the equivalent of a bachelor's degree and five years of progressive work experience

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.) As proof of the beneficiary's foreign equivalent degree, the petitioner submits a copy of the beneficiary's B.A. degree in English from Osmania University, India, issued April 8, 1994,¹ a certificate from Comtech Computers showing that the beneficiary completed a two-year applications and programming course in November 1995, and two academic evaluations.

The Trustforte Corporation's evaluation states that the beneficiary's degree from Osmania University represents the equivalent of three years of academic study at a U.S. institution of higher education. It then purports to review the beneficiary's work experience and concludes that the

¹ The diploma shows that the beneficiary passed his last examination in November 1993, but the university did not issue the diploma until April 8, 1994.

combination of his employment history and formal education are “the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the U.S.”

We note that Trustforte’s identification of the beneficiary’s past employers conflicts with this beneficiary’s identification of employers submitted on Labor Form ETA 750-B, and also does not match the letters from the beneficiary’s employers submitted with this petition.

Cultural House Evaluation Services (CHES) evaluated the beneficiary’s educational credentials only, consisting of his degree from Osmania University and the certificate of training from Comtech Computers. It concluded that his formal education is “the equivalent of an individual with the Degree, Bachelor of Arts in Political Science, Public Administration & Sociology, with studies in Computer Applications & Programming, from an accredited institution of higher education in the U.S. This evaluation is based on formal education.”

In denying the petition, the director concluded that the beneficiary’s certificate of computer training in combination with his bachelor’s degree is not the equivalent of a U.S. bachelor’s degree.

On appeal, the petitioner’s counsel asserts that the director failed to recognize the validity of the CHES evaluation and resubmits copies of the beneficiary’s certificate from Comtech, his degree from Osmania University, and copies of previously submitted employers’ letters.

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 regulation requires 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 progressive experience. 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. Trustforte’s evaluation failed to consider formal education only and contained noticeable factual flaws. CHES’ academic evaluation also considered the combination of the beneficiary’s diploma from Osmania University and a certificate from an outside source in concluding that his bachelor of arts degree is the equivalent of a U.S. baccalaureate degree, and stated that his degree from Osmania University was awarded in 1993, rather than in 1994, as the diploma specifies. 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.

The evidence fails to establish that the beneficiary holds any individual degree that is equivalent to a U.S. baccalaureate degree. As such, the beneficiary’s subsequent work experience cannot be

considered post-baccalaureate experience necessary to satisfy the regulatory requirement of an advanced degree.

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.