



U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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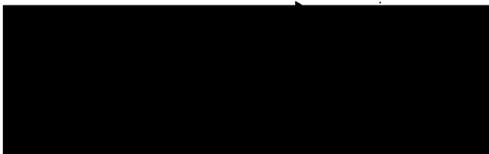
Date:

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a computer software company that seeks to employ the beneficiary as a programmer/analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined the beneficiary does not possess the educational background required by the terms of the labor certification.

On appeal, counsel asserts that the director disregarded a second evaluation of the beneficiary's educational credentials, indicating that the beneficiary holds a degree equivalent to a baccalaureate, rather than merely the "functional equivalent" of such a 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. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. 204.5(k)(2).

Part A ("Offer of Employment) of the labor certification application, Form ETA-750, shows the following "minimum education, training and experience" requirements in block 14:

Education: 5 years of college  
College Degree Required: "M.S. (or equivalent)"  
Major Field of Study: "Computer Science or Engineering"  
Experience in Job Offered: 6 months

A separate notation on the form indicates that the petitioner will accept a "B.S. or equivalent in Computer Science or Engineering, with 5 years of progressive programming experience" in place of the M.S. degree and 6 months of experience listed above. On block 11 of the Form ETA-750B, Statement of Qualifications of Alien, the beneficiary indicated that he earned a "B.S. (equivalent)" in Computer Science after studying at Bharathiar University from August 1988 to May 1991. The beneficiary claims no other college degree.

An independent evaluation of the beneficiary's educational credentials, by Roberta Hopkins of Educational Evaluators International, Inc. ("EEI") indicates that the beneficiary "completed the three year full time program" and thus "would have completed all of the theoretical and practical application of specialized knowledge required for the functional equivalent of a major in Computer Science Applications for a Bachelor of Science degree awarded by regionally accredited colleges and universities in the United States." The evaluation did not indicate that the beneficiary's three-year degree was the full equivalent of a four-year bachelor's degree from a U.S. college or university.

The director instructed the petitioner to submit evidence, and stated “it appears that the beneficiary does not possess the required Bachelor’s Degree.” In response, the petitioner submits two new evaluations. Dr. Gary W. Hopkins, president of EEI, states that the U.S. differs from many other countries in that a U.S. college education involves a year or more of “general studies” which would be redundant in other nations, where the general studies are completed during secondary school. The implication is that a baccalaureate degree takes less time to acquire overseas than in the United States, but involves the same degree of specialized learning. Dr. Hopkins continues:

To EEI, the functional equivalent of a US Bachelor’s degree has, inherently, two essential elements. The first is that an individual . . . is capable of functioning in the same capacity as one who has an earned degree in the same field in the US. The second essential element is that the individual is eligible for further education or, in other words, meets the required level of previous education to enter a graduate level program. In the case of [the beneficiary], his Bachelor’s Degree would allow him to enter a graduate level program in India. In addition, he would have been eligible to [enter] some US and Canadian institutions. . . .

[The beneficiary] is fully qualified to practice his respective profession in the United States by virtue of having the functional equivalent of a US Bachelor’s Degree.

Dr. Hopkins does not clarify what he means by “some” institutions, a term which necessarily implies that other U.S. colleges and universities would consider the beneficiary’s education insufficient for admission to a U.S. graduate program.

Dr. Therese L. Stewart of Cambridge Evaluation Service states that the beneficiary “holds the equivalent of a **Bachelor’s Degree in Computer Science** at an accredited institution of higher education in the United States.” Dr. Stewart bases this conclusion on evidence that the beneficiary “has completed the university’s program . . . and received the university degree of Bachelor of Science.” Dr. Stewart does not address the length of the beneficiary’s program (three rather than four years) or explain why this factor is unimportant.

The director denied the petition, stating that the petitioner’s submission “does not change or alter our original conclusion, the alien possesses a functional equivalent of a concentration in computer science, not a Bachelor’s Degree.” Counsel asserts, on appeal, that the director erred by failing to give full consideration to the newly submitted evaluations. Counsel contends that the record “**clearly** establishes that the Beneficiary holds the FULL equivalency of a Bachelor’s degree in Computer Science from an accredited university in the United States and meets all the criteria for this position as was reviewed and approved by the Department of Labor” (emphasis in original).

With regard to the Department of Labor’s approval of the labor certification, the Department of Labor is not responsible for determining whether or not the alien meets the minimum job

requirements. Notwithstanding counsel's assertion, the record does not "clearly" establish the beneficiary's eligibility. The record contains no fewer than three evaluations of the beneficiary's degree. One states, with minimal elaboration, that the beneficiary's degree is equivalent to a U.S. baccalaureate. The other two are more ambiguous; the original evaluation deems the beneficiary's degree the "the functional equivalent of a major in Computer Science Applications" – completion of a major is not the same as earning a degree – and the remaining evaluation indicates that "some" U.S. institutions would regard the beneficiary's degree as sufficient for admission into a graduate program. Thus, the only evaluation that unambiguously declares the beneficiary's eligibility is the least detailed. Given the immediately obvious inconsistencies between these three evaluations, we cannot find that the record "clearly" demonstrates the equivalency of the beneficiary's degree. 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. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Commr. 1988).

Given the ambiguous and inconsistent nature of the evaluations, we cannot find that the petitioner has demonstrated that the beneficiary's three-year degree in computer science is the recognized equivalent of a U.S. four-year bachelor's degree in that field. Thus, the beneficiary does not meet the minimum qualifications set forth in the labor certification, and furthermore the beneficiary does not qualify for classification as a member of the professions holding an advanced degree or its equivalent.

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. Accordingly, the decision of the director will not be disturbed and the appeal will be dismissed.

**ORDER:** The appeal is dismissed.