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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 28 2003

File: EAC 01 174 53458 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)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER: SELF-REPRESENTED

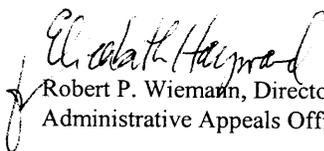
INSTRUCTIONS:

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. The director reopened the proceeding on the petitioner's motion and again denied the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting company that seeks to employ the beneficiary as a systems 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 beneficiary's education is fully equivalent to a bachelor's 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: 6 years of college
College Degree Required: "MASTERS or EQUIVALENT"
Major Field of Study: Computer Science, Engineering, or Mathematics
Experience in Job Offered or Related Occupation: 1 year

A separate notation on the form indicates that a "Bachelor's Degree with five years experience is considered as equivalent to master's degree." On block 11 of the Form ETA-750B, Statement of Qualifications of Alien, the beneficiary indicated that he earned a B.S. in Computer Science and Mathematics after studying at Mohanlal Sukhadia University from July 1987 to May 1990. The beneficiary also earned an honors diploma in Systems Management from the National Institute of Information Technology between July 1990 and June 1992. Both of these institutions are located in India.

The petitioner's initial submission included no independent evaluation of the beneficiary's educational credentials. In response to a request by the director, the petitioner has since submitted an evaluation by [REDACTED] of the Trustforte Corporation, Inc. [REDACTED] discusses the beneficiary's course work at Mohanlal Sukhadia University and indicates that the beneficiary "satisfied substantially similar requirements to the completion of three years of academic studies leading to a Bachelor of Science Degree from an accredited institution of higher education in the United States. [REDACTED] then turns his attention to the beneficiary's subsequent studies at the National Institute of Information Technology, and states "by completing at least one and [a] half years of academic studies, in addition to

completing a Bachelor of Science Degree from Mohanlal Sukhadia University, the candidate attained the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the US.”

The above evaluation indicates that the beneficiary does not hold any one degree that is equivalent to a U.S. baccalaureate. The director denied the petition, stating that the regulations do not permit the combining of multiple degrees to form the aggregate equivalent of one U.S. bachelor’s degree. The petitioner appealed this decision, and the director considered the petition as a motion and reopened the proceeding. [REDACTED] identified as “attorney for the petitioner” (apparently an employee of the petitioning company rather than simply retained for the purpose of the appeal), states “Bachelor’s Degree in most of the countries is awarded after three years of studies except in Engineering and Technology. To make it equivalent to a US Bachelor’s Degree one year is always taken from further studies for bachelor’s Degree, Diploma courses or any Advanced Degree or three years experience in related field.” [REDACTED] offers no evidence to support the claim that, in most countries, a baccalaureate program generally lasts three years rather than four years.

The director, in denying the petition, had stated “[t]he requirements as described in the 8 CFR do not allow for the combining of a degree with other post-secondary courses, training or experience in order to achieve a foreign degree equivalent.” [REDACTED] protests that the director failed to explain where in the regulations this provision can be found. We note that the director was not referring to a specific regulation; rather, the director observed that no pertinent regulation exists that allows for the substitution of two sub-baccalaureate degrees in place of one baccalaureate-level degree. If the regulation does not exist, then clearly it is impossible to cite a specific location in the regulations where the regulation fails to appear.

Furthermore, the regulatory definition of “advanced degree” is instructive. 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as “any United States academic or professional 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 regulation does not refer to a combination of foreign degrees that, in the aggregate, are equivalent to a United States baccalaureate degree. The regulation requires “a foreign equivalent degree,” i.e. one single foreign degree which is the self-contained equivalent of a United States baccalaureate degree.

The regulatory demand for a (single) foreign equivalent degree is repeated in the Service’s regulation at 8 C.F.R. 204.5(k)(3)(i)(B), which states that an alien who does not hold an actual advanced degree may qualify if the petitioner submits “[a]n official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence . . . [of] at least five years of progressive post-baccalaureate experience in the specialty.”

We also note that, while the regulations offer a precise definition of the equivalent of an advanced degree (five years of progressive post-baccalaureate experience), there is no such definition of the equivalent of a U.S. baccalaureate. The regulations, in other words, make a clear allowance for the

absence of an actual advanced degree, but they make no such allowance for the absence of a U.S. baccalaureate degree or a foreign degree that is equivalent to a U.S. baccalaureate degree.

Thus, the regulations provide ample support for the position that the alien must hold one single degree that is equivalent to a U.S. baccalaureate, and no support at all for the contention that multiple lesser degrees may serve in place of “a foreign equivalent degree,” or that a combination of disparate educational experience can be considered to be “a degree.”

The petitioner has submitted a letter from [REDACTED] associate professor at the Zicklin School of Business, Baruch College, City University of New York. [REDACTED] states that the beneficiary’s “combination of academic credentials suggests that the candidate gained a level of academic competence equivalent to a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States.” The regulatory standard, however, is not “a level of academic competence equivalent to a United States baccalaureate degree.” Rather, the standard is “a United States baccalaureate degree or a foreign equivalent degree.” [REDACTED] does not indicate that the beneficiary holds any degree that is equivalent to a U.S. baccalaureate.

Upon reopening the petition, the director again denied it, reaffirming that the “functional equivalent” of a bachelor’s degree cannot fulfill the plainly-worded regulatory requirement of “a foreign equivalent degree.” On appeal from this second decision [REDACTED] asserts that the director “totally ignored” pertinent evidence and “exceeded his authority and discretion in denying the case.”

In the brief on appeal [REDACTED] reviews the evidence of record and repeats the unsubstantiated assertion that a three-year baccalaureate degree is the norm in most countries. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). It remains that a three-year degree and a one-and-a-half year diploma constitute two degrees rather than “a foreign equivalent degree.”

The petitioner submits an affidavit from [REDACTED] the petitioner’s director of operations and chief technical officer, who states that the petitioner “has equivalent to Bachelor’s Degree of US in Computer Science” [sic]. The opinions of an officer of the petitioning company do not supersede other evidence of record, even if those opinions are set forth in the form of a sworn affidavit. The issue in contention is not whether the petitioning company considers the beneficiary to be qualified for the position. If the petitioner is willing to consider applicants with foreign degrees that, individually, are not equivalent to a U.S. baccalaureate, the labor certification should include an explanation of what the petitioner considers to be the equivalent of that degree. Otherwise, a reference to a U.S. bachelor’s degree or its equivalent necessarily defaults to the regulatory understanding of what constitutes that equivalent. If the petitioner chooses to offer an alternative definition of what it considers to be the equivalent of a U.S. baccalaureate, then the possibility exists that the resulting job description may place the job opportunity within a lower immigrant classification. That is, if the job no longer requires, at minimum, a U.S. baccalaureate degree or a foreign equivalent degree, then the position is no longer “professional” as defined at 8

C.F.R. § 204.5(k)(2) and the petitioner must seek a lower immigrant classification for the beneficiary.

█ states that, in a teleconference with a Service official, “it was clarified that foreign three years Bachelor’s Degree will be considered equivalent to Bachelors degree and cases will not be denied on this basis.” The petitioner submits no documentation of this teleconference (e.g. a transcript certified by the participants), nor any evidence of any formal change in Service policy as a result of that teleconference (e.g. a copy of a policy memorandum issued to Service officers). An unsubstantiated one-sentence description of a telephone conversation cannot suffice as grounds to overturn the director’s finding, or to nullify the regulatory requirement that an alien must possess “a foreign equivalent degree.”

Given the evaluations and other evidence, 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. A combination of degrees is not “a . . . degree” and thus that combination cannot meet the regulatory requirements. 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.