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U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
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Washington, D.C. 20536



JAN 13 2003

File: EAC-00-029-50448 Office: Vermont Service Center 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(h)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(h)(2)

IN BEHALF OF PETITIONER:



Identifying data deleted to
prevent identity information
invasion of personal privacy

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
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 holding an advanced degree. The petitioner seeks to employ the beneficiary as a chief computer programmer. 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, counsel argues that the beneficiary has the equivalent of an advanced 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.

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 claims that the beneficiary has the equivalent of a baccalaureate degree plus at least five years of progressive experience. The petitioner initially submitted the beneficiary's bachelor of science degree issued by Bangalore University, a "diploma" issued by the National Institute of Information Technology (NIIT), and an evaluation of these degrees by the Trustforte Corporation. As noted by the director, the evaluation provides the following information regarding the beneficiary's educational history:

The nature of the course and the credit hours [at Bangalore University] involved indicate 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.

. . . The nature of the courses and the credit hours [at NIIT] indicate that he satisfied substantially similar requirements to the completion of two years of academic studies leading to a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States.

Based on the reputations of Bangalore University and the National Institute of Information Technology, the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, it is the judgment of The Trustforte Corporation that [the beneficiary]

completed the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the US.

Based on this statement, the director concluded that the beneficiary did not have a foreign degree that was equivalent to a U.S. baccalaureate degree.

Matter of Sea, Inc., 19 I&N 817 (Commissioner 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.

On appeal, counsel argues that since the regulations permit the combination of a degree and experience as the equivalent of an advanced degree, the Service should permit the combination of degrees as equivalent of a bachelor's degree. We do not find this argument persuasive. 8 C.F.R. 204.5(k)(2) expressly permits the combination of a bachelor's degree and experience to equal the equivalent of an advanced degree. 8 C.F.R. 204.5(k)(2) also expressly permits the substitution of "a foreign equivalent degree" as the equivalent of a baccalaureate degree. 8 C.F.R. 204.5(k)(2) does not expressly permit any substitution or combination of degrees for the "foreign equivalent degree."

As stated above, the beneficiary must have a degree that is the equivalent of a U.S. baccalaureate degree. A combination of degrees 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 light of the above, we concur with the director that the beneficiary does not have 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. Thus, the beneficiary is not an advanced degree professional as defined in the regulations.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.