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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
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Washington, D.C. 20536

JUL 03 2003

File: [REDACTED] WAC 99 235 54459 Office: CALIFORNIA 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)

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was revoked by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.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 petition was approved on December 19, 2000. The director subsequently sent a motion to reopen/reconsider and intent to revoke the approval to the petitioner on March 01, 2001. A notice of revocation of the approved petition was issued on June 29, 2001. The director revoked the approval of the petition because she determined that the beneficiary's three-year program resulting in a bachelor of science degree is not the foreign equivalent to a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the classification as a member of the professions holding an advanced degree.

On appeal, the petitioner's counsel contends that the beneficiary has a foreign degree equivalent to a bachelor's degree from an accredited United States college and over five years of 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 United States 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 May 17, 1999. 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 degree in computer science or a related field plus three years of experience, 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 bachelor of science degree from Meerut University, India, (now known as Ch. Charan Singh University) conferred on July 20, 1992. The diploma indicates that the beneficiary's degree is based on a three-year undergraduate curriculum. The record also contains university grade transcripts, and a statement from the registrar at Ch. Charan Singh University indicating that the

beneficiary attended the university from 1989 to 1992. The registrar's letter indicates that the beneficiary's area of study was chemistry, mathematics and physics. The record also contains a certificate from Computer Connections Training Institute, Muzaffarnagar, India, showing that the beneficiary completed a course entitled "post graduate diploma in computer software applications" conducted from August 17, 1991 until September 14, 1992. The petitioner also submits three academic evaluations in support of the petition.

In a letter dated May 19, 1997, Foreign Credential Evaluations, Inc. states that the beneficiary's degree from Meerut University "is a three-year program of study transferable to a regionally accredited university in the United States." It then purports to review the beneficiary's certificates of completion from the Computer Connections 1991-1992 course, an Oracle application course conducted from June 24, 1995 to July 7, 1995, and a June 15, 1996 certificate from Oracle. The evaluation states that these courses represent "a year of study in Computer Science." The evaluation concludes that the beneficiary has the U.S. equivalent of a bachelor of science degree with an additional concentration in computer science.

In response to the director's motion to reopen/reconsider and intent to revoke the petition, the petitioner submits a credentials evaluation from Washington Evaluation Service dated March 15, 2001. This evaluation states that it reviewed the beneficiary's three-year degree from Meerut University, the certificate of training from Computer Connections, and the beneficiary's transcripts listing courses and grades. It states that the beneficiary's "bachelor degree is considered to be academically equivalent to a Bachelor of Science and a second major in Computer Science as awarded by an accredited U.S. university. Admission to this program required the equivalent to a U.S. high school diploma." The evaluation then states that the beneficiary's computer studies are academically equivalent to a second major in computer science.

The petitioner subsequently submitted a second evaluation from the Washington Evaluation Service dated July 3, 2001. This evaluation states that the beneficiary's bachelor's degree from Meerut University is the equivalent to a U.S. bachelor of science degree in chemistry, physics and mathematics. It bases this conclusion on the total number of semester hours completed by the beneficiary, the observation that Indian universities don't require other electives and the lengthier duration of semesters in India.

On appeal, the petitioner's counsel asserts that the director failed to recognize the validity of the Washington Evaluation Service's evaluations and resubmits copies of the beneficiary's computer training certificate and his documentation from Meerut University.

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 United States 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 United States baccalaureate degree, does not meet the regulatory requirement of a foreign equivalent degree. The Foreign Credentials Evaluation, Inc. evaluation combined the beneficiary's three years of study and subsequent outside computer training courses to conclude that he has the requisite bachelor's degree. The March 2001 evaluation from the Washington Evaluation Service also appears to use the beneficiary's outside computer training to support the conclusion that he has the United States equivalent of a bachelor's degree with a second major. The July 2001 Washington Evaluation Service letter asserts that the beneficiary's three-year bachelor of science degree from Meerut University is the complete equivalent to a U.S. bachelor's degree. We note that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

As noted above in *Matter of Sea, Inc.*, and by their own disclaimers, these evaluations are considered to be advisory opinions only. These evaluations are further inconsistent with one another, and the director did not err in rejecting them. 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).

We also note that merely accumulating a certain number of semester credit hours does not automatically create the equivalency to a United States baccalaureate degree.¹ As stated in the July 2001 Washington Evaluation Service evaluation, United States universities typically require electives in other courses to complete a baccalaureate degree.

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 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.



¹ Neither the beneficiary's transcripts nor the 12/23/2000 registrar's letter indicate the individual semester credit hour value for each course.