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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
BCIS, AAO, 20 Mass., 3/F  
Washington, D.C. 20536



File: EAC 01 030 51820 Office: Nebraska Service Center

Date: JUL 23 2003

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:



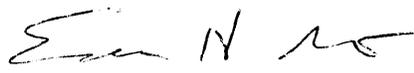
INSTRUCTIONS:

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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (“AAO”) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will be denied.

The petitioner is a software development, networking and consulting company. It seeks to employ the beneficiary as a Senior Systems Engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as member of the professions holding an advanced degree. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify for the position offered.

The regulation at 8 C.F.R. § 204.5(k)(2) states:

Advanced degree means any United States academic or professional degree or a foreign equivalent 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states:

(i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The director’s decision noted that the beneficiary had completed three years of university study, and that the independent evaluation presented from Foreign Credential Evaluations, Inc. did not indicate that that the beneficiary’s three-year degree is equivalent to a U.S. baccalaureate. The initial credentials evaluation stated:

In summary, it is the judgement that of Foreign Credential Evaluations, Inc. that his three years of university level study and six years of professional experience in Computer Programming are equivalent to the degree, Bachelor of Science in Computer Programming, for employment purposes, from an accredited educational institution in the United States.

The director stated that the beneficiary's education, non-university training, and employment experience, taken together, amount to "the 'functional' equivalent of a bachelor's degree in Computer Programming, not the specific degree. Functional equivalents are not acceptable education credentials for immigrant petitions." The director concluded "it does not appear the beneficiary possesses the required degree or equivalent degree required by the labor certification."

In a decision dated January 17, 2003, the AAO concurred with the director's finding, stating:

While the [regulation at 8 C.F.R. § 204.5(k)(3)(i)] allows for a combination of experience and education to serve in the place of an actual master's degree, there is no comparable allowance for a combination of experience and education to serve in the place of an actual bachelor's degree. The requirement of a "foreign equivalent degree" indicates that the alien must possess a single degree (rather than a series of degrees) that is, standing alone, equivalent to a U.S. baccalaureate.

In other words, if the beneficiary does not actually hold a U.S. baccalaureate degree (or a full equivalent degree from a foreign institution), the beneficiary cannot qualify as a member of the professions holding an advanced degree.

On motion, counsel now asserts that the beneficiary possesses "the equivalent of a Master's degree in Computer Information Systems from an accredited college or university in the United States of America." In support of the motion, the petitioner submits a new credentials evaluation from IndoUS Technology & Educational Services, Inc. In addressing the beneficiary's Bachelor of Science degree from the University of Bombay, the evaluator states: "This degree is equivalent to 3 years of academic studies towards a B.S. degree in Science... from an accredited college or university from the United States of America."

The evaluator concludes by stating:

[The beneficiary's] six years of progressively responsible Information Technology work experience, combined with his Bachelor's degree, IT certificates, and CNA & CNE certifications, is equivalent to a Master's degree in Computer Information Systems from an accredited college or university in the United States of America.

The presentation of this second credentials evaluation, however, does not overcome the grounds for denial.

First, the beneficiary's three-year bachelor's degree from the University of Bombay will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). According to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. After 12 years of primary and upper primary school, a bachelor's degree in the

arts, commerce, or the sciences may be earned after three years of higher education. A bachelor's degree in a professional field of study, such as agriculture, dentistry, engineering, pharmacy, technology, and veterinary science, generally requires four years of education. *See generally* Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework - Degree Structure*, (last updated October 1, 2001), available at <http://www.education.nic.in/htmlweb/higedu.htm>. If supported by a proper credentials evaluation, a four-year baccalaureate degree from India could reasonably be deemed to be the "foreign equivalent degree" to a United States baccalaureate degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah* at 245. Based on the same reasoning, the beneficiary's three-year Bachelor of Science (Physics) degree from the University of Bombay will not be considered the "foreign equivalent degree" to a United States baccalaureate degree for purposes of this preference visa petition.

Second, the record of proceeding does not establish that the beneficiary has a "foreign equivalent degree" to a U.S. baccalaureate or a U.S. master's degree. In this case, the petitioner has submitted two conflicting educational evaluations; the first declaring the beneficiary as the holder of the functional equivalent of a "Bachelor of Science in Computer Programming" and the second declaring him the holder of the functional equivalent of a "Master's degree in Computer Information Systems." It is noted that both evaluations deemed the beneficiary's three-year Bachelor of Science degree from India to be equivalent to the completion of three years of academic studies leading to a baccalaureate degree from an accredited institution of higher education in the United States.

The Bureau may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Bureau is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In the present matter, the two conflicting evaluations are deemed to be less than probative in evaluating the beneficiary's foreign education.

Neither the statute nor the conforming regulations allow for alternatives to the requirement of the specific degree required on the Form ETA-750, whether the equivalency is based on work experience or a combination of lesser educational degrees and certifications. In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

The Act states that, in order to qualify under the second classification, alien members of the

professions must hold “advanced degrees or their equivalent.” As the legislative history . . . indicates, the equivalent of an advanced degree is “a bachelor’s degree with at least five years progressive experience in the professions.” Because neither the Act nor its legislative history indicates that bachelor’s or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

Because the beneficiary does not possess a “United States baccalaureate degree or a foreign equivalent degree” or a “foreign equivalent degree above that of baccalaureate,” he does not qualify for preference visa classification under section 203(b)(2) of the Act. Nor does he meet the educational requirements set forth in the labor certification.

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 AAO’s decision of January 17, 2003 is affirmed. The petition is denied.