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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE

425 Eye Street N.W.

BCIS, AAO, 20 Mass., 3/F

Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: Nebraska Service Center

Date: JUL 23 2003

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)

IN BEHALF OF PETITIONER:

[REDACTED]

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, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a software development and computer consulting company. It seeks to employ the beneficiary permanently in the United States as a Software Consultant/Testing Coordinator 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 found that the job offered did not qualify as a position requiring a professional with an advanced degree or its equivalent. The director also determined that the beneficiary's degree was not included in the types of degrees listed as acceptable for the position offered on the addendum to Form ETA-750A.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

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 first issue to be determined is whether the position offered requires a member of the professions holding an advanced degree or its equivalent. The key to this determination is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. Blocks 14 and 15 of the ETA-750 Part A must establish that the position requires an employee with either a master's degree or 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)(4)(i).

It is important that the ETA-750 be read as a whole. In particular, if the education requirement in block 14 includes an asterisk (*) or other footnote, the information included in the note must be included in determining whether the educational requirement, as a whole, shows that an advanced degree or the equivalent is the minimum acceptable qualification for the position. In this case, block 14 states: "See attached addendum."

The attached addendum to the ETA-750 Part A states the following:

Major Field of Study

Computer Science, Systems Analysis, Computer Engineering, Electrical Engineering, Electronics Engineering, Computer Information Systems, Mathematics, Statistics, Mechanical Engineering or its foreign educational equivalent. Will accept a Bachelor's degree and five years experience in the job offered in lieu of the required education and experience. Any suitable combination of education, training and experience is acceptable.

The director found that because the position offered permitted "[a]ny suitable combination of education, training and experience," an advanced degree or its equivalent would not be the minimum acceptable qualification for the position.

On appeal, counsel cites *Matter of Kellogg*, 94-INA-465, in which the Board of Alien Labor Certification Appeals (BALCA) held that "where an alien does not meet the primary job requirements, but only potentially qualifies for the job because the employer has chosen to list alternative job requirements, the employer's alternative requirements are unlawfully tailored to the alien's qualifications, in violation of Section 656.21(b)(5) unless the employer has indicated that applicants with any suitable combination of education, training or experience are acceptable."

Counsel appears to have misinterpreted the BALCA finding. That finding does not mandate the exact use of the phrase "any suitable combination of education, training or experience are acceptable" on labor certifications filed with the Department of Labor. It merely requires applicants to identify specifically any alternative education, training or experience requirements on the Form ETA-750 Part

A. For example, the petitioner's statement that the petitioner "[w]ill accept a Bachelor's degree and five years experience in the job offered in lieu of the required education and experience" (in this case, a master's degree plus three years of experience in the job offered) would satisfy the Department of Labor's guidelines.

However, by stating under item 14 of the ETA-750 that "[a]ny suitable combination of education, training and experience is acceptable," a plain reading of the labor certification indicates that the position offered, at a minimum, would not necessarily require a member of the professions holding an advanced degree or its equivalent. The vagueness of that statement would seemingly permit any level of education or experience.

The director also determined that the beneficiary did not meet the educational requirements specified in the addendum to the ETA-750 Part A. According to the beneficiary's academic equivalency evaluation from The Trustforte Corporation, he holds the U.S. equivalent of a "Bachelor of Business Administration Degree." It is not apparent how "Business Administration" relates in any way to Computer Science, Systems Analysis, Computer Engineering, Electrical Engineering, Electronics Engineering, Computer Information Systems, Mathematics, Statistics, or Mechanical Engineering. Therefore, we concur with the director's finding that the beneficiary's academic credentials do not meet the educational requirements set forth in the labor certification.

Beyond the decision of the director, it has not been established that the beneficiary holds the foreign equivalent of a United States baccalaureate degree. We withdraw the director's finding in that regard. The educational evaluation from The Trustforte Corporation offers the following analysis:

[The beneficiary] completed both the general studies and specialized studies which lead to a Diploma from [Gujarat] University. The general studies included entry-level courses in the social sciences, mathematics, and the sciences, which are a requisite component of a bachelor's degree from an institution of higher education in the United States. Based on the subject matter and credit hours of these courses, most such courses would qualify as equivalent to courses in U.S. institutions. Additionally, [the beneficiary] completed specialized courses in his area of concentration, Physics, and related areas. Following completion of the required coursework and examinations in 1981, [the beneficiary] was awarded a Bachelor of Science Degree from the University. The nature of the courses and the credit hours involved indicate that he satisfied substantially similar requirements to the completion of three years of academic studies leading toward at least a Bachelor's Degree from an accredited institution of higher education in the United States.

Thereafter, in 1990, [the beneficiary] entered the Master of Business Administration program in the B.K. School of Business Management at Gujarat University.... The coursework specialized in Business Administration, including graduate-level classes in Principles of Management, Organizational Behavior, Managerial Communication, Marketing Management, Production Management, Financial Management, Production Management, Sales and Distribution Management. New Enterprise Management, Management Control

System, Public Enterprise Management, and related subjects. The nature of the courses and the credit hours involved, considered together with his prior academic studies, indicate that [the beneficiary] satisfied substantially similar requirements to the attainment of a Bachelor of Business Administration Degree from an accredited institution of higher education in the United States.

Based on the reputation of Gujarat University, 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] attained the equivalent of at least a Bachelor of Business Administration Degree from an accredited institution of higher education in the United States.

Based on the beneficiary's combined three-year diplomas in two completely different fields of study (physics and business administration), the Trustforte Corporation concluded that the beneficiary "attained the equivalent of a Bachelor of Business Administration Degree from an accredited institution of higher education in the U.S."

There is, however, no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. 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. The Bureau uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an opinion 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 (Comm., 1988).

The beneficiary received his Bachelor of Science degree in Physics from Gujarat University in India after completing three years of study. A bachelor's degree, however, is generally found to require four years of education. See, e.g. *Matter of Shah*, 17 I&N Dec. 244, 245 (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.

The beneficiary later obtained a Master of Business Administration degree after completing another three years of study at Gujarat University. In addressing the beneficiary's diploma, the evaluator stated:

The nature of the courses and the credit hours involved, considered together with his prior academic studies, indicate that [the beneficiary] satisfied substantially similar requirements to the attainment of a Bachelor of Business Administration Degree from an accredited institution of higher education in the United States.

Satisfying "substantially similar requirements to the attainment of a Bachelor of Business Administration Degree," however, does not equate to holding "a foreign equivalent degree."

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).

In this case, the credentials evaluator concluded that two-three year diplomas in differing fields of study were the equivalent of a bachelor's degree in Business Administration. As noted previously, there is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. Whether the equivalency of a bachelor's degree is based on work experience alone or on a combination of degrees from differing academic fields of study (as in the present case), the analysis results in the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. As noted in the federal register, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to bachelor's degree will qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience.

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree," the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree.

For the above stated reasons, considered both in sum and as separate grounds for denial, the petition may not be approved.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely 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.