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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



File: EAC 01 251 52923

Office: VERMONT SERVICE CENTER

Date: MAR 17 2003

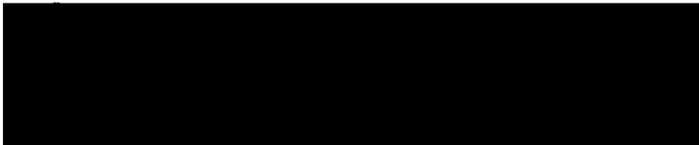
IN RE: Petitioner:  
Beneficiary:



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)

ON BEHALF OF PETITIONER:

**PUBLIC COPY**



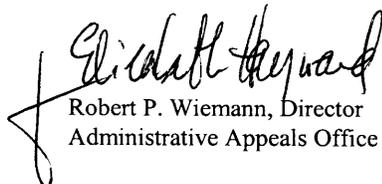
**INSTRUCTIONS:**

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 petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a software engineer systems company that seeks to employ the beneficiary as a software engineer 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, and also does not qualify for the classification sought.

On appeal, counsel asserts that the 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). The petitioner does not claim that the beneficiary holds an actual advanced degree; the petition is predicated on the claim that the beneficiary has a bachelor's degree and five years of qualifying experience.

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:

College Degree Required: "Master's Degree"  
Major Field of Study: "Computer Science, Maths, Science (or) Engineering"  
Experience in Job Offered or Related Occupation: 2 years

A separate notation on the form indicates that the petitioner "will consider a Bachelor's Degree in the above fields with five years experience in the job offered or as a Systems Analyst/Programmer Analyst" in lieu of a master's degree. On block 11 of the Form ETA-750B, Statement of Qualifications of Alien, the beneficiary indicated that she earned a Bachelor of Science degree in "Maths, Physics" at Osmania University from August 1984 to July 1987, and a "Post Grad. Diploma" in "Systems Management" at the National Institute of Information Technology (NIIT) from April 1991 to October 1992.

The initial submission includes an independent evaluation of the beneficiary's credentials, by [REDACTED] of International Credentials Evaluation Services. [REDACTED] states that the petitioner's studies at Osmania University equate to "the completion of three years of academic studies in a Bachelor of Science Program" at an accredited U.S. institution. [REDACTED] then considers the beneficiary's three semesters at NIIT, and states that the course work and credit hours that the beneficiary accumulated at Osmania University and NIIT "indicate that [the beneficiary] satisfied similar requirements to the completion of four years of academic studies in a Bachelor of Science Program in Mathematics with course work in Computer Sciences (Systems

Management) from an accredited institution of higher education in the United States.” [REDACTED] concludes that the beneficiary’s “academic credentials may be deemed to be the equivalent of a Bachelor of Science Degree in Mathematics” from an accredited U.S. institution, but does not state that the beneficiary holds any single degree that is equivalent to a U.S. baccalaureate.

The director requested additional evidence, including a credentials evaluation. In response, the petitioner has submitted a new evaluation by [REDACTED] of International Credentials Evaluation and Translation Service. [REDACTED] states that the beneficiary, at Osmania University, “satisfied similar requirements to the completion of three years of academic study towards a Bachelor of Science Degree from an accredited institution of tertiary education in the United States.” [REDACTED] compares the beneficiary’s studies at NIIT to “one year of specialized academic coursework in Computer Science” toward a U.S. baccalaureate. Like [REDACTED] does not state that the beneficiary has earned a degree comparable to a U.S. baccalaureate; rather, the beneficiary has “satisfied similar requirements to the completion” of such a degree.

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.

On appeal, counsel states that the director “contended the beneficiary possesses only three years of academic study towards a bachelor’s degree,” and “failed to notice that the beneficiary successfully completed a one and [one] half year postgraduate diploma in Computer Programming and Computer Application [at the] National Institute of Information Technology.” The record entirely refutes counsel’s assertion. The director, in the notice of decision, repeatedly mentions the beneficiary’s diploma and identifies, by name, the National Institute of Information Technology. Indeed, counsel acknowledges elsewhere the director’s discussion of that diploma.

Counsel states “the degree program and the postgraduate diploma program were awarded [sic] prior to the filing of the underlying labor certification and instant immigrant visa petition and thus is [sic] not an issue of this appeal.” This observation is irrelevant. The relevant issue in the director’s decision is the permissibility of combining two entirely separate degrees; the director never claimed that the beneficiary completed her degrees after the filing date.

Counsel asserts that the petition ought to be approved because the beneficiary’s two degrees “are the equivalent of a four-year Baccalaureate degree” from a U.S. institution. Counsel also contends that the director “erroneously asserted that 8 C.F.R. 204.5(k)(3) does not allow for the combining of a degree with other post secondary courses.” Counsel maintains that this regulation “does not specifically prohibit combining of a degree with other post secondary courses, professional studies in order to achieve a foreign degree.” Nevertheless, 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 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. The regulations demand an "equivalent degree," not the "equivalent of a 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."

Even if we were to accept that the beneficiary's combination of degrees is acceptable as the equivalent of a bachelor's degree, review of the record shows that another problem arises. In *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), the Immigration and Naturalization Service (now the Bureau) held that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition. Pursuant to *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977), the petition's filing date is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. In this instance, the petition's filing date is August 8, 2000.

The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) states that the petitioner must submit "[a]n 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." If the petitioner's October 10, 1992 diploma from NIIT is part of her bachelor's degree, then none of her experience before October 10, 1992 can be considered to be post-baccalaureate experience. The petitioner must establish at least five years of progressive experience between October 10, 1992 and August 8, 2000.

The record, however, does not establish five years of employment experience during that period. The beneficiary claims the following employment on Form ETA-750B:

2/1988 – 1/1991	Instructor/programmer analyst, St. Joseph's Boys High School
1/1992 – 11/1994	Programmer analyst, Aptech Limited
1/1999 – 7/1999	Systems analyst, QA Group of New York
4/2000 – present	Software engineer, petitioning company

Employer letters submitted with the petition corroborate two of the above claims. There is no letter from QA Group of New York. There is no evidence that the beneficiary was employed between November 1994 and April 2000, and the beneficiary claims only seven months of employment during that five and a half year period. Assuming that the beneficiary did work seven months for QA Group, as claimed, the above information indicates that the beneficiary worked a maximum of roughly 37 months between October 10, 1992 and August 8, 2000. Thus, even if we were to accept the petitioner's claim that the beneficiary's October 1992 diploma constitutes part of the beneficiary's bachelor's degree, the petitioner has not shown that the beneficiary had at least five years of progressive post-baccalaureate experience as of the petition's filing date.

Counsel asserts, on appeal, that "the instant petition should have been approved as a professional worker under Section 203(b)(3)(A)(ii)" of the Act. There is, however, no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. Prior to the issuance of the decision, the petitioner had offered no indication that it sought to change the classification of the petition. Counsel's claim that the director "should have" adjudicated the petition under a classification that was never sought is, on its face, untenable. It is the petitioner's responsibility to specify, prior to the adjudication, the classification it seeks. It is not the director's responsibility to review the record and select the most appropriate classification, nor is it the director's role to alter the terms of the petition in order to increase its chances of approval. The approved labor certification remains valid if the petitioner chooses to file a new petition seeking a different classification. If approved, the new petition would retain the August 8, 2000 priority date.

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. Also, the petitioner has not shown that the beneficiary accumulated at least five years of qualifying employment experience after the date she completed her education, and therefore 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.