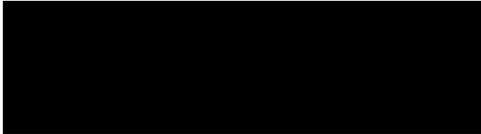


B5

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

**Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**

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

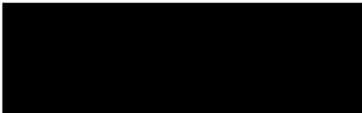


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File:  Office: Nebraska Service Center

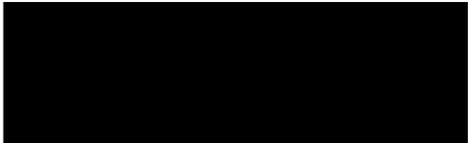
Date:

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(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 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 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 software engineer. 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 Ravishankar University, a diploma issued by the National Institute of Information Technology (NIIT) in India, and an evaluation of these degrees by International Credentials Evaluation and Translation Services (ICETS). The evaluation concluded that the beneficiary's bachelor's degree from Ravishankar 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." The evaluation later concludes:

The academic criterion maintained by The National Institute of Information Technology significantly parallel those parameters upheld by accredited colleges and universities of precedence in the United States. Calculations based on course duration and composition in the Systems Management Diploma program, considered together with his prior studies at Ravishankar University, indicate that [the beneficiary] satisfied similar requirements to the completion of a Bachelor of Science Degree in Computer Science from an accredited institution of tertiary education in the United States.

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. On appeal, counsel argues that the Service (now the Bureau) has accepted evaluations from ICETS previously. Counsel further asserts that ICETS

“has specifically found that [the beneficiary] has a foreign equivalent degree to a United States Bachelor of Science Degree in Computer Science.”

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.

It is of some concern that the record includes a fax cover letter from the petitioner to ICETS stating, “please equate to U.S. degree in Computer Engineering.” The record does not contain evidence that the author of this fax cover letter has the experience to evaluate the beneficiary's credentials. If requesting an independent evaluation, the petitioner should not be instructing ICETS as to its conclusion. A request to evaluate the beneficiary's credentials to determine *whether* they are equivalent to a specific degree would have been more appropriate. Regardless, the Bureau is not contesting ICETS' conclusion. 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. Contrary to counsel's assertion, ICETS did not find that the petitioner has a single degree that is equivalent to a U.S. baccalaureate degree. Rather, ICETS found that the petitioner's degree and diploma, when taken together, “satisfied similar requirements” to a U.S. baccalaureate degree. In light of the above, we concur with the director that the beneficiary does not have a degree that is 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.