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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, DC 20536

File: EAC-02-042-50753

Office: Vermont Service Center

Date:

MAY 12 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)

PUBLIC COPY

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, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont 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 (web developer). 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 the University of Peradeniya, a membership certificate for the Australian Computer Society, and an evaluation of these credentials by the Trustforte Corporation. As noted by the director, the evaluation concludes that the beneficiary's bachelor of science degree is the equivalent of "the completion of three years of academic studies leading to a Bachelor of Science Degree, with a concentration in Mathematics and Computer Science, from an accredited institution of higher education in the United States." The evaluation then considers the courses required for membership in the Australian Computer Society and concludes:

The completion by [the beneficiary] of the educational requirements for admission as a professional member of the Australian Computer Society, considered together with his prior completion of a Bachelor of Science Degree at the University of Peradeniya, is analogous to the attainment of a Bachelor of Science Degree, with a concentration in Mathematics and Computer Science, from an accredited institution of higher education in the United States.

The director requested additional evidence that the beneficiary had a degree that was equivalent to a U.S. bachelor's degree. In response, counsel cites nonimmigrant regulations regarding certifications and asserts that these regulations apply since the definition of "profession" is the same for

nonimmigrant and immigrant classifications. The petitioner submitted two additional credentials evaluations from Educational Assessments, Inc. and Globe Language Services. Educational Assessments asserts that the Australian Computer Society requires four years of “examinations/experience” and concludes that the membership in combination with the beneficiary’s three-year bachelor’s degree is equivalent to a U.S. bachelor’s degree. Globe Language Services concludes that the beneficiary’s bachelor’s degree standing on its own is equivalent to a U.S. bachelor’s degree.

The petitioner also submitted the membership requirements for the Australian Computer Society which state:

A Member is a person who: has completed a course of study in IT which is accredited by the Society at Professional Level, OR who has an equivalent Core Body of Knowledge as assessed by the Membership Board, AND has at least four years relevant professional experience.

According to additional society materials, the “Core Body of Knowledge” is “clearly defined as at bachelor degree level.”

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 director should have considered the educational requirements of membership in the Australian Computer Society.

The only evaluation that concludes that the beneficiary has a foreign degree that is equivalent to a U.S. bachelor’s degree is the evaluation from Globe Language Services. This evaluation, while concluding that the beneficiary’s Bachelor of Science degree alone is equivalent to a U.S. bachelor’s degree, is contradicted by both other evaluations.

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.

In addition, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). As the petitioner has not resolved the inconsistency, we cannot accept the evaluation from Globe Language Services.

As stated above, the beneficiary must have a degree that is the equivalent of a U.S. baccalaureate degree. A combination of degrees or degree and professional certification 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.” In light of the above, we concur

with the director that that the beneficiary does not have the equivalent of a U.S. baccalaureate degree.

Counsel's previous argument regarding regulations relating to nonimmigrant classifications is not persuasive. Specifically, counsel references 8 C.F.R. § 214.2(h)(4)(iii)(D). That regulation defines "equivalence to completion of a college degree" and includes a combination of education and experience. 8 C.F.R. 204.5(k)(2), however, requires "a foreign equivalent degree" to a U.S. bachelor's degree. Credentials equivalent to the completion of a degree is a much broader requirement than a foreign degree that is equivalent to a U.S. baccalaureate degree. Further, counsel's argument regarding the "Core Body of Knowledge" is equally unpersuasive. The materials for the Australian Computer Society indicate that this knowledge incorporates coursework at the bachelor level, but makes no reference to attaining that degree. In fact, Rule 3.2(c), relating to members, provides that eligibility for membership through the recognized prior learning process requires only an associate degree. None of the society materials indicate that the society is a degree issuing institution. Thus, membership in the society, even if based on examination, is not equivalent to a *degree* issued by an institute of higher learning.

In light of the above, 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, 8 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.