

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



File: EAC 01 243 50053 Office: Vermont Service Center Date: MAY 13 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]

**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*  
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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software development company. It seeks to employ the beneficiary permanently in the United States as a systems analyst 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 petitioner had failed to establish that the beneficiary meets the minimum requirement of a baccalaureate degree or its foreign equivalent.

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 Service 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 Service 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 record contains an educational evaluation from Joel Slocum of Education International, Inc. The evaluation offers the following analysis: "The credentials of [the petitioner] indicate... that he has achieved the functional equivalent of a Bachelor's degree in Business Administration, specialized in accounting, at an accredited institution in the United States."

In response to the director's request for further evidence of the beneficiary's qualifications, the petitioner submitted a second statement from [REDACTED] offering a clarification of his initial analysis. He states: "By 'functional equivalent' I mean an equivalency which in one way or another is not a 'full equivalency' (it might, for example, be less than the usual number of years) but which nevertheless covers the essentials. What is lacking are non-major, liberal arts courses."

The director denied the petition, stating: "Since the evaluator clearly states that certain components of a United States Bachelor's degree are lacking, the degree cannot be considered to be equivalent to a degree in the United States."

On appeal, counsel states: "[I]t is our position that a 'functional' equivalent should be treated for I-140 employment-based purposes as the same thing as a 'full' equivalent since a functional equivalent covers the essentials of a specialized discipline."

In this matter, we concur with the decision of the director. A beneficiary must possess a foreign degree equivalent to a United States bachelor's degree in order to qualify for the visa classification based on a claim of a master's degree equivalency. If the beneficiary does not actually hold a bachelor's degree (or a full equivalent degree from a foreign institution), the beneficiary cannot qualify as a member of the professions holding an advanced degree. According to the beneficiary's diploma and the Form ETA-750B, he received his Bachelor of Commerce from the University of Calicut 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).

As stated in the regulations, the beneficiary must have a baccalaureate degree and five years of progressive experience in order to qualify as possessing the equivalent of an advanced degree. Neither the statute nor the conforming regulations allow for an alternative to the requirement of a bachelor's degree.

Counsel indicated that he would submit a brief and/or evidence to the AAO within sixty days. Counsel dated the appeal February 5, 2002. As of this date, more than fourteen months later, the AAO has received nothing further.

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.