

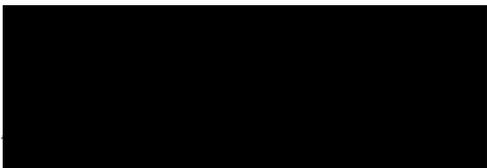
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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
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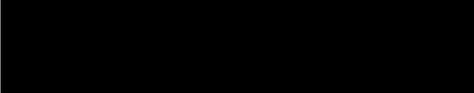


File: EAC 02 085 51126

Office: VERMONT SERVICE CENTER

Date: **MAY 28 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)

IN 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 preference 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 diversified multimedia entertainment company that is engaged in broadcasting, publishing, and theme parks. It seeks to employ the beneficiary permanently in the United States as a quality assurance manager 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. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess the equivalent of an advanced degree as he did not hold a "United States baccalaureate degree or a foreign equivalent degree."

On appeal, counsel asserts that the beneficiary possesses a foreign degree equivalent to a United States baccalaureate degree.<sup>1</sup> In support of the appeal, counsel submits a new evaluation of the beneficiary's foreign degree and a copy of a letter from the Bureau's Office of Adjudications.

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 United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). Regarding the "equivalent" of an advanced degree, the regulations state: "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." *Id.*

As the beneficiary possesses a foreign three-year bachelor's degree, the sole issue in this proceeding is whether that degree may be considered a "foreign equivalent degree" to a United States baccalaureate degree so that the beneficiary would have the equivalent of an advanced degree.

The record contains an approved Department of Labor Form ETA-750, Application for Alien Labor Certification (labor certification). Regarding the minimum level of education and experience required for the proffered position, Part A of the labor certification reflects the following:

Item 14: Education – Master of Science in Computer Science.

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<sup>1</sup> The petitioner's current counsel replaced the original attorney that filed the immigrant visa petition. Upon submitting a substitute Form G-28, Notice of Entry of Appearance as Attorney, the petitioner's counsel submitted a letter dated February 6, 2003 withdrawing the appeal. Subsequently, counsel reconsidered and requested a written decision. Although the appeal may be dismissed as withdrawn, a written decision will be entered for purposes of addressing the issue in this matter and to preserve the petitioner's right to appellate review.

Experience – 1 year as Q&A Manager or Project Manager or Team Leader.

Item 15: Will consider BS degree and 5 years experience.

The beneficiary received a "Bachelor of Commerce (Honours Course)" from the University of Delhi in 1988 after three years of study. The beneficiary's diploma indicates that the degree was awarded in accordance with India's "10+2+3 Scheme." The original petition was accompanied by a credentials evaluation from the Trustforte Corporation. In evaluating the beneficiary's Bachelor of Commerce degree, the evaluator stated:

Enrollment in the University of Delhi is based on graduation from high school and competitive entrance examinations; the University is an accredited institution of higher education in India. [The beneficiary] entered the University in 1985 and completed his studies in 1988. He received a diploma for a Bachelor of Commerce Degree, having completed the required coursework and having passed the examinations required of candidates for the degree of Bachelor of Commerce. The diploma is evidence that he completed his course of studies at the University.

[The beneficiary] completed both the general studies and specialized studies which lead to a diploma from the University. The course of studies includes entry-level general academic courses, 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 US institutions. Additionally, [the beneficiary] completed coursework in costing, management, economics, and accounting, as well as in related subjects. *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 to a baccalaureate degree from an accredited institution of higher education in the United States.*

(Emphasis added.) After considering the beneficiary's university studies, the Trustforte evaluation evaluated the beneficiary's additional training that was received after his bachelor's degree. In 1988, the beneficiary received a "One Year Advanced Diploma" in Computer Software Applications and Management from the training division of Informatics Computer Systems, in India. Additionally, in 1992 and 1993, the beneficiary completed two semesters of coursework at the National Institute of Information Technology, in India. The evaluator did not state whether the beneficiary's additional training was received at accredited institutions of higher education in India. Based on the record of proceeding, the beneficiary appears to have received the additional training through "in house training" and through a technical institute.

Based on the beneficiary's combined education and training, the Trustforte Corporation concluded that the beneficiary "completed the equivalent of a Bachelor of Science Degree in Computer Information Systems from an accredited institution of higher education in the U.S."

After requesting additional information on the matter, the director denied the petition. The director noted that while the beneficiary may possess the equivalent of a bachelor's degree for purposes of his previous nonimmigrant H-1B status, the "formal-education requirement of the H-1B petition is much more flexible than the standard for the present second-preference [immigrant visa] petition." *Cf.* 8 C.F.R. § 214.2(h)(4)(iii)(D). The director concluded that although the beneficiary had the required five years of experience applicable toward an advanced degree equivalency, he does not have the required baccalaureate degree or its foreign equivalent degree.

On appeal, counsel asserts first that the beneficiary has a "foreign equivalent degree" without considering the beneficiary's post-baccalaureate training. In support of this assertion, counsel submits a new evaluation of the beneficiary's credentials that was performed by Educated Sources, LLC. The new evaluation states that the consulting firm had reviewed the beneficiary's transcript and diploma and had determined that he has a total of four years of university-level studies. Specifically, the Educated Sources evaluation states:

[The beneficiary] completed the Indian Board of Secondary Education's Senior School Certificate Examination with significantly above average results in several subjects in 1983. As noted in *PIER World Education Series: India*, students with excellent results in the standard XII examinations of the Central Board of Secondary Education (CBSE) are treated as A-level holders. A-level holders are granted one year of undergraduate university-level study by colleges, universities, and recognized evaluation services in the U.S. As a result, this individual's exceptional secondary school accomplishments are at the level of Advanced Placement and are the equivalent of one year of university study. In addition, upon the completion of a 3-year course of study at the University of Delhi, India, [the beneficiary] was admitted to the degree of Bachelor of Commerce (Honours Course) in 1988. This institution is the equivalent of a regionally accredited U.S. college or university. This total of 4 years of university level study is the equivalent of a U.S. Bachelor's degree.

*As stated above, it is our opinion that [the beneficiary] has achieved the equivalent of a Bachelor's Degree in Business Administration as awarded by a regionally accredited U.S. college or university.*

(Emphasis in original.) The evaluation does not provide a copy of the resource it relied upon in its evaluation, specifically the claim that "A-level holders are granted one year of undergraduate university-level study by colleges, universities, and recognized evaluation services in the U.S." Furthermore, the evaluation does not provide the exact criteria for determining "A-level holder" status. Most notably, the petitioner has not submitted any evidence to establish that the beneficiary was actually an "A-level holder." The Bureau will not infer that the beneficiary holds this unexplained status simply because he scored "significantly above average results in several subjects" on the senior school board examination.

In the alternative, counsel asserts that the Bureau should consider the beneficiary's multiple degrees in evaluating whether the beneficiary has a "foreign equivalent degree." Counsel submits a copy of a letter dated January 7, 2003, from Mr. [REDACTED] Director of the

Business and Trade Services Branch of the Bureau's Office of Adjudications (Office of Adjudications letter). This letter discusses whether a "foreign equivalent degree" must be in the form of a single degree or whether the beneficiary may satisfy the requirement with multiple degrees.

The Office of Adjudications letter was written in response to a letter from an attorney who inquired whether, for purposes of 8 C.F.R. § 204.5(k)(2), a "foreign equivalent degree" is limited to a "foreign degree" or whether "foreign education" may count, "when no formal degree is conferred or a 3 year foreign degree combined with a diploma that is determined to be equivalent to a United States degree." In response, Mr. [REDACTED] stated:

You ask whether the reference to "a foreign equivalent degree" in 8 C.F.R. 204.5(k)(2) means that the *foreign equivalent advanced degree* must be in the form of a single degree. Despite the use of the singular "degree," it is not the intent of the regulations that only a single foreign degree may satisfy the equivalency requirement. Provided that the proper credential evaluations service finds that the foreign degree or degrees are the equivalent of the required US degree, then the requirement may be met.

(Emphasis added.)

Considering the new credentials evaluation and the Office of Adjudications letter, counsel asserts that the beneficiary has a "foreign equivalent degree" to a United States baccalaureate degree.

Counsel's assertions are not persuasive. First, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. 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> (printed copy incorporated into the record of proceeding). 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. Based on the same reasoning, the beneficiary's three-year Bachelor of Commerce degree from the University of Delhi will not be considered the "foreign equivalent degree" to a United States baccalaureate degree for purposes of this preference visa petition.

Second, the record of proceeding does not establish that the beneficiary has a "foreign equivalent degree" as the petitioner has submitted two conflicting evaluations of the beneficiary's Bachelor of Commerce degree. The original evaluation from Trustforte Corporation deemed the beneficiary's three-year Bachelor of Commerce degree to be equivalent to the completion of three years of academic studies leading to a baccalaureate degree from an accredited institution of higher education in the United States. The second evaluation from Educated Sources, LLC determined that the combination of the beneficiary's three years of study at the University of Delhi plus the beneficiary's claimed status as an "A-level holder" is the equivalent of a United States bachelor's degree. The two evaluations are problematic for a number of reasons. First, the petitioner has not submitted any evidence to establish that the beneficiary is an "A-level holder" or that such a status would credit the beneficiary with an extra year of university study. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Second, although both of the evaluation services reviewed the beneficiary's diplomas and transcripts, the two evaluations come to conflicting conclusions as to how the beneficiary's education is the equivalent of a United States bachelor's degree. Finally, the ultimate problematic point is one that the two evaluations agree upon: both evaluations pronounce the beneficiary's three-year Bachelor of Commerce degree to be the equivalent of three years of study at an accredited United States college or university.

The Bureau may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In the present matter, the unsupported and conflicting evaluations are deemed to be less than probative in evaluating the beneficiary's foreign education.

Finally, the letter from the Office of Adjudications is not persuasive. The succinct response of Mr. [REDACTED] specifically refers to "the foreign equivalent advanced degree" as the point of concern, rather than the phrase "United States baccalaureate degree or a foreign equivalent degree." Accordingly, the response appears to specifically address the phrase "foreign equivalent degree" as it relates to the definition of advanced degree at 8 C.F.R. § 204.5(k)(2): "'Advanced degree' means any United States academic or professional degree or a foreign equivalent degree above the baccalaureate level." Mr. [REDACTED] response is reasonable when considered in the context of a "foreign equivalent degree" to a United States advanced degree; by definition, an advanced degree is a degree above the baccalaureate level, thereby requiring multiple degrees.

However, if applied to the phrase "United States baccalaureate degree or a foreign equivalent degree" contained at 8 C.F.R. § 204.5(k)(2), the letter's reasoning would lead to results directly contrary to the regulations, statute, and the intent of Congress. 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).

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. Although the preamble to the publication of the final rule specifically dismissed the option of equating "experience alone" to the required bachelor's degree, the same reasoning applies to accepting an equivalence in the form of multiple lesser degrees, professional training, incomplete education without the award of a formal degree, or any other level of education deemed to be less than the "foreign equivalent degree" to a United States baccalaureate degree. Whether the equivalency of a bachelor's degree is based on work experience alone or on a combination of multiple lesser degrees, 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.

Furthermore, the Office of Adjudications letter is not binding on the AAO. Letters written by the Office of Adjudications do not constitute official Bureau policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any Bureau officer as they merely indicate the writer's analysis of an issue. *See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000)(copy incorporated into the record of proceeding).

As previously noted, the ETA-750 labor certification specifically requires a Master of Science in computer science and one year of experience, or a Bachelor of Science in an unspecified field and five years of experience. Based on the submitted evidence, the petitioner has not established that the beneficiary possesses a United States Master of Science degree or a foreign equivalent degree. And as previously explained, the petitioner has not established that the beneficiary possesses the minimum alternate qualifications, a Bachelor of Science degree with five years of

experience, as the beneficiary's three-year Bachelor of Commerce degree is not a "United States baccalaureate degree or a foreign equivalent degree." 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. The denial of this petition does not bar the filing of a new petition on behalf of the beneficiary under section 203(b)(3) of the Act as a skilled worker with more than two years of training and experience.

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.