

U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: VERMONT SERVICE CENTER

Date: NOV 21 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)

ON BEHALF OF PETITIONER:

[REDACTED]

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 Citizenship and Immigration Services (CIS) 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 computer consulting and software development 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.

On appeal, counsel asserts that the beneficiary's education is fully equivalent to a bachelor's degree, and that the beneficiary's employment experience has been progressive in nature.

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 holds a bachelor's degree plus five years of qualifying progressive employment experience.

The primary issue in the director's decision concerns the beneficiary's education. 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:

Education: number of years of college left blank
College Degree Required: "Bachelors"
Major Field of Study: "Eng/Comp Sci/Math/MIS or eqv"
Experience in Job Offered or Related Occupation: 5 years
Related Occupation: Programmer Analyst

On block 11 of the Form ETA-750B, Statement of Qualifications of Alien, the beneficiary indicated that she earned a "Bachelor of Arts" degree in "Arts" at Andhra Pradesh Open University from June 1987 to May 1989, and a "Post Graduate Dip" in "PGDCA" at Ontrack Information Technology from June 1989 to May 1990.

Documentation from [REDACTED] indicates that the beneficiary completed a "3 year degree course" under the tutelage of the "Faculty of Arts." (We note that the beneficiary's claimed dates account for only two years at the university.) The documentation does not specify the beneficiary's major field of study, and therefore there is no basis to presume that the beneficiary's degree in "Arts" reflects a major in engineering, computer science, or mathematics.

A certificate from the Computer Training Division of Ontrack Information Technology confirms that the beneficiary “successfully completed [a] one year training programme” for a “P.G.D.C.A.” certificate. Other materials in the record indicate that “PGDCA” stands for “Post Graduate Degree in Computer Applications.”

The director requested “an advisory evaluation of the beneficiary’s formal education . . . to determine the level and major field of educational attainment.” In response, the petitioner has submitted an independent evaluation of the beneficiary’s credentials. The evaluator states that the beneficiary’s Bachelor of Arts degree and PGDCA are, collectively, equivalent to a “Bachelor of Science Degree in Computer Science.” The evaluator stated that the beneficiary, at [REDACTED] [REDACTED] “satisfied similar requirements to the completion of academic coursework in a core curriculum of a Baccalaureate Degree program at an accredited institution of tertiary education in the United States.” Completion of “core curriculum” requirements does not fulfill degree requirements at a United States college or university.

The evaluator states “[u]pon completion of the necessary course work requisite of the core curriculum and the major area of concentration . . . , [the beneficiary] was awarded a Bachelor of Arts Degree from [REDACTED].” The evaluator does not specify what “the major area of concentration” was. Indeed, the record is devoid of any indication of the beneficiary’s major field of study at [REDACTED].

The evaluator concludes that the beneficiary has completed coursework comparable to the coursework required by a United States institution for a Bachelor of Science degree in Computer Sciences. The evaluator, however, does not identify the courses the beneficiary took, nor does he even claim to have seen documentation listing those courses. This omission is highlighted by the evaluator’s vague reference to the beneficiary’s “major area of concentration” without actually revealing what that major was. The evaluator does not indicate that he has reviewed any documentation apart from the beneficiary’s diplomas and certificates.

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 “[t]he requirements as described in the 8 CFR do not allow for the combining of a degree with other post-secondary courses, training or experience in order to achieve a foreign degree equivalent.”

On appeal, counsel states:

The record will clearly reflect that the beneficiary holds a Bachelor’s degree awarded by [REDACTED] in India (1989). It is conceded that the said degree is equivalent to three years of academic degree [sic] towards a bachelor’s degree.

However, the Center Director failed to notice that the beneficiary, in addition, successfully completed a two-year postgraduate diploma in Information Technology by [REDACTED] in Hyderabad, India (1990).



The beneficiary claimed to have studied at Andhra Pradesh Open University from June 1987 to May 1989, which is two rather than three years. The beneficiary's PGDCA studies took one year, rather than two years.

Counsel states:

Contrary to the Center Director's assertion, 8 CFR 204.5(k)(3) does not specifically prohibit combining of a degree *with other post secondary courses, professional studies* in order to achieve a foreign degree. It merely states the documentary evidence required to establish that the alien is a professional holding an advanced degree.

It is well known that the regulation only *prohibits combining the professional studies, training or experience in order to achieve an equivalent of a foreign degree*. . . .

The beneficiary herein clearly does not combine education with training and or work experience, which is impermissible under the Act and regulation. Undoubtedly, the beneficiary has achieved the foreign equivalent of a bachelor's degree solely based on professional studies alone.

The regulatory definition of "advanced degree" is instructive in this matter. 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, rather than course work equivalent, in the aggregate, to such a 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.”

Furthermore, as noted above, the petitioner has documented only one year of computer studies. There is no evidence at all that the beneficiary’s major field of study at Andhra Pradesh Open University was in, or related to, any of the fields listed on the labor certification. The fact that the beneficiary received a Bachelor of Arts, rather than Sciences, degree reinforces this conclusion. As noted above, the evaluator implied that he had reviewed the beneficiary’s coursework, but he identified neither the courses themselves, nor any documentation that would have listed those courses.

The issue in contention is not whether the petitioning company considers the beneficiary to be qualified for the position. If the petitioner is willing to consider applicants with foreign degrees that, individually, are not equivalent to a U.S. baccalaureate, the labor certification should include an explanation of what the petitioner considers to be the equivalent of that degree. Otherwise, a reference to a bachelor’s degree or its equivalent necessarily defaults to the regulatory understanding of what constitutes that equivalent. The job offer is in the United States and therefore the term “bachelor’s degree” is presumed to mean a United States baccalaureate degree. If the petitioner chooses to offer an alternative definition of what it considers to be the equivalent of a U.S. baccalaureate, then the possibility exists that the resulting job description may place the job opportunity within a lower immigrant classification. That is, if the job no longer requires, at minimum, a U.S. baccalaureate degree or a foreign equivalent degree, then the position is no longer “professional” as defined at 8 C.F.R. § 204.5(k)(2) and the petitioner must seek a lower immigrant classification for the beneficiary.

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. The petitioner must specify, in advance, the classification sought. The director is not under any obligation to “second guess” the petitioner and repeatedly adjudicate the petition until a suitable classification is found. We note that, in any event, the petitioner has not shown that the beneficiary meets the minimum qualifications stated on the labor certification. Reclassifying the petition would not remedy this deficiency.

The director devoted considerably less space to a second finding, specifically that the petitioner has not shown that the beneficiary’s employment experience has been progressive in nature. Because the beneficiary does not possess an advanced degree, the petitioner must show that the beneficiary holds a bachelor’s degree followed by at least five years of progressive employment experience. 8 C.F.R. § 204.5(k)(2) and (3)(i)(B).

The petitioner has shown that the beneficiary has worked for several employers since 1993, always as a programmer analyst. The director noted “it has not been established that [the

beneficiary's] duties became more complex or that she was given greater responsibilities in any of the positions.”

Counsel argues that the beneficiary's duties were “progressively complex” owing to continuing, and accelerating, advances in computer science. This is a plausible argument. It remains, however, that the beneficiary's experience must be progressive *post-baccalaureate* experience if the beneficiary is to qualify for the classification sought.

For the reasons listed above, we cannot find that the petitioner has demonstrated that the beneficiary possesses any degree that is the recognized equivalent of a U.S. four-year bachelor's degree in the major fields of study specified on the labor certification. Thus, the beneficiary does not meet the minimum qualifications set forth in the labor certification, and furthermore the petitioner has not shown that the beneficiary qualifies 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.