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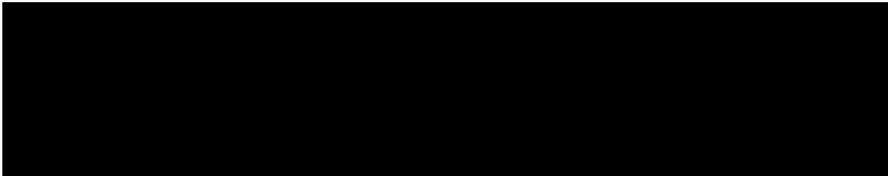
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U.S. Department of Homeland Security
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**U.S. Citizenship
and Immigration
Services**



FILE: EAC 02 042 50753 Office: VERMONT SERVICE CENTER Date: FEB 23 2004

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Mari Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont Service Center. The Administrative Appeals Office (“AAO”) dismissed a subsequent appeal. The matter is now before the AAO on a motion to reopen and reconsider. The motion will be granted, the previous decision of the AAO will be affirmed, and the petition will be denied.

The petitioner is an internet based consumer buying service. It seeks to employ the beneficiary as a software engineer (web developer) 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 beneficiary does not qualify as an advanced degree professional.

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.*

The AAO’s May 12, 2003 appellate decision noted that the petitioner had submitted educational evaluations from Trustforte Corporation, Educational Assessment, Inc., and Globe Language Services, Inc. The AAO concluded that the record of proceeding did not establish that the beneficiary holds a “foreign equivalent degree” as the petitioner had submitted conflicting evaluations of the beneficiary’s Bachelor of Science degree. The original evaluation from Trustforte Corporation deemed the beneficiary’s three-year Bachelor of Science degree from the University of Peradeniya 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. In evaluating this degree, the evaluator from Trustforte Corporation stated: “The nature of the courses and the credit hours involved indicated that he satisfied substantially similar requirements to the completion of three years of academic studies leading to a Bachelor of Science degree...from an accredited institution of higher education in the United States.”

Trustforte’s evaluator later concluded: “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...from an accredited institution of higher learning in the United States.” In the same manner, the evaluator from Educational Assessment, Inc. concluded that “[a] combination of the three-year Bachelor of Science degree earned in Sri Lanka and the examinations/experience necessary to qualify with [the Australian Computer Society], warrants justification for equivalency to a U.S. Baccalaureate degree in Computer Science.”

Contrary to the findings from Trustforte Corporation and Educational Assessment, Inc., the evaluator from Globe Language Services concluded that the three-year degree, by itself, was equivalent to a U.S. bachelor’s degree. Pursuant to published precedent, however, a three-year bachelor’s degree is not 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). If supported by a proper credentials evaluation, a “four-year” baccalaureate degree from Sri Lanka 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 Science degree from the University of Peradeniya will not be considered the "foreign equivalent degree" to a United States baccalaureate degree for purposes of this visa petition.

In addressing the conflicting educational evaluations, the AAO stated:

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.

Citizenship and Immigration Services (CIS) 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, CIS 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 conflicting evaluations are deemed to be less than probative in evaluating the beneficiary's foreign education.

The AAO concluded:

[T]he beneficiary must have a degree that is the equivalent of a U.S. baccalaureate degree. A combination of degrees or degree and professional certifications, 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.

The requirement of a "foreign equivalent degree" at 8 C.F.R. § 204.5(k)(2) indicates that the alien must possess a single degree (rather than a series of degrees or lesser certifications) that is, standing alone, equivalent to a U.S. baccalaureate.

On motion, counsel states:

The beneficiary in this case has a 3-year Bachelor's degree from a foreign institution plus a one-year certificate issued following further formal academic training. The sole issue in this case is...whether the beneficiary has a foreign degree which is equivalent to a U.S. Bachelor's degree.... In reaching the decision to dismiss the appeal, the AAO did not consider or disregarded the January 7, 2003 advisory opinion of the Director, Business and Trade Services for the INS, Mr. [REDACTED]

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 (legacy INS), 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 CIS 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 CIS officer as they merely indicate the writer’s analysis of a particular issue. See Memorandum from ██████████ Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

In this case, the ETA-750 labor certification specifically requires a Master's degree in Computer Science, Engineering or a related field and three years of experience, or a Bachelor of Science in an unspecified field and five years of progressive experience. Based on the evidence presented, the petitioner has not established that the beneficiary possesses a United States Master's 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 Science degree is not a "United States baccalaureate degree or a foreign equivalent degree." Because the beneficiary does not possess 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, the petition may not be approved. 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.

ORDER: The AAO's decision of May 12, 2003 is affirmed. The petition remains denied.