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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

File:

Office: NEBRASKA SERVICE CENTER

Date: **JAN 20 2004**

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)

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 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 visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a software consulting firm. It seeks to employ the beneficiary permanently in the United States as a software consultant 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. In support of the appeal, counsel submits a new evaluation of the beneficiary’s foreign degree and a copy of a letter from CIS’ 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, item 14 of the labor certification reflects the following:

College:	Four years
Degree:	Masters degree “or its equiv. in education and experience. Will also accept a bachelor’s degree followed by 5 years of progressive experience in the computer software specialty in lieu of the required education and experience.”
Major:	Computer Science, Computer/Electrical/Electronic Engineering, Mathematics
Experience:	Two years in the job offered or a related occupation

On Form ETA-750B Statement of Qualifications, the beneficiary claimed to have earned a Bachelor of Science degree in Physics, Chemistry and Mathematics from Bangalore University, 1984 to 1987, and a "post-graduate diploma" in Systems Management from the National Institute of Information Technology (NIIT), from 1988 to 1991.

Dr. Gerald L. Itzkowitz of Morningside Evaluations and Consulting stated that the beneficiary, during his three years at Bangalore University, "satisfied requirements substantially similar to those required toward the completion of three years of academic studies leading to a Bachelor's Degree from an accredited institution of higher education in the United States." With regard to the beneficiary's subsequent studies at NIIT, Dr. Itzkowitz concluded:

The nature of the courses and the credit hours involved, and considering [the beneficiary's prior] completion of a Bachelor of Science degree [at Bangalore University], indicate that he satisfied substantially similar requirements to the completion of academic studies leading to a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States.

The director instructed the petitioner to "[s]ubmit evidence that the alien holds a U.S. baccalaureate degree (or a foreign equivalent degree) in the form of an official college or university record." The petitioner has responded by submitting copies of previously submitted documents, and statements from officials of the schools that the beneficiary had attended. The petitioner submitted documents from NIIT confirming that the beneficiary took courses there toward a "post graduate honours diploma in Systems Management," but the NIIT documents do not reflect the granting of any academic degree. Documents from NIIT are somewhat inconsistent; some documents indicate that the beneficiary studied through 1991, but other materials state that the beneficiary's course of study "was completed on the 27th of October 1989." The beneficiary, who had initially stated that he studied at NIIT until 1991, stated in an affidavit that he "attended courses in pursuit of this degree from July 6, 1988 until October 27, 1989."

The director denied the petition, stating "the educational evaluation provided does not indicate that the beneficiary's **education alone** (university level study) is the equivalent of a baccalaureate degree" (emphasis in original). On appeal, the petitioner submits a new evaluation from Professor Jonatan Jelen of Mercy College, Dobbs Ferry, New York. The new evaluation is virtually identical to the prior evaluation by Dr. Itzkowitz, with entire paragraphs copied verbatim from that earlier evaluation. Other paragraphs containing only cosmetic changes such as dates, and the change from "Immigration and Naturalization Service" to "Citizenship and Immigration Services." Several times, Prof. Jelen's evaluation refers to "Morningside Evaluations and Consulting," even though the evaluation is on the letterhead of Mercy College rather than Morningside Evaluations and Consulting. This evaluation, like the previous evaluation, does not indicate that the beneficiary holds any one degree that is equivalent to a United States baccalaureate degree; rather, the conclusion is based on the beneficiary's studies at

Bangalore University and NIIT. Both evaluators have found that the beneficiary possesses the equivalent of a bachelor's degree, rather than "a foreign equivalent degree."

Counsel states:

There should be nothing controversial about Professor Jelen's conclusion that the beneficiary's post graduate diploma, along with his three-year Bachelor of Science Degree, is the equivalent of a U.S. baccalaureate in Computer Science. The Service itself endorsed just this reasoning in *Matter of Rajagopalamenon* [13 I&N Dec. 110 (D.D. 1968)], in which it accepted the conclusion of the Department of Health, Education, and Welfare, that the applicant's three-year Bachelor of Science degree in an unspecified major, Master of Science degree in Anthropology and some course work leading to a Ph.D in Anthropology at Ohio State University was the equivalent of a Bachelor's degree in Anthropology, even though no four year baccalaureate was ever awarded to the applicant.

Counsel's citation of *Matter of Rajagopalemenon* (in which the Regional Commissioner denied the petition) is off point. In the proceeding now at hand, the beneficiary completed additional training at NIIT, but there is no indication that the beneficiary received any actual academic degree as a result of those studies.

Counsel cites a November 13, 1995 memorandum from Louis D. Crocetti, Jr., then Associate Commissioner for Examinations, stating "[c]redentials evaluations submitted with an H-1B petition by a reputable credentials evaluation service should be accepted without question unless containing obvious errors. The ability of the credentials evaluator to perform the evaluation should not be challenged if the evaluation was performed by a professional credentials evaluation service."

The above memorandum cannot and does not supersede published precedent. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). Even then, the evaluations clearly indicates that the beneficiary's education at NIIT and Bangalore University must be considered together to represent the equivalent of a baccalaureate degree. Neither of the evaluations submitted by the petitioner indicates that the beneficiary holds any degree that is equivalent to a United States baccalaureate degree.

The petitioner submits a copy of a letter dated January 7, 2003, from Mr. Efen Hernandez III, Director of the Business and Trade Services Branch of CIS' 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.) The above letter is not dispositive. 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 Science degree from Bangalore University will not be considered the “foreign equivalent degree” to a United States baccalaureate degree for purposes of this preference visa petition.

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 be 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, legacy INS 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. In addition, a combination of degrees 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.

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 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's degree in Computer Science, Computer/Electrical/Electronic Engineering, or Mathematics, and two years of experience, or a Bachelor of Science in one of the above fields and five years of experience. Based on the submitted evidence, 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 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.

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.