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MAR 26 2004

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date:

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 preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) 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 Citizenship and Immigration Services’ (CIS’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.*

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 requirements: Five years of college; a Master’s degree in Computer Science or other specified major fields of study; and six months of experience in the job offered. The petitioning employer “[w]ill also accept a bachelor’s degree or its foreign equivalent degree followed by 5 years of progressive experience in the software specialty in lieu of the required education and experience.”

On the Form ETA-750B Statement of Qualifications, the beneficiary lists the following education:

Meerut University	7/1984 – 1/1986	Bachelor’s degree
Regional Computer Centre	9/1986 – 4/1987	Certificate
Nat’l Inst. of Info. Tech	9/1987 – 9/1988	Post Graduate Diploma

The petitioner’s initial submission includes an educational evaluation from Harry S. Silberzweig of the Trustforte Corporation. The evaluation indicates that, at Meerut University, the beneficiary “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.” The evaluation indicates that the beneficiary began studying at Meerut University in 1983, although the beneficiary himself claimed to have started there in 1984, and the certificates from the college provide no conflicting starting date. Taking into account the beneficiary’s studies at the National Institute of Information Technology, the evaluation indicates that the beneficiary “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 requested further evidence to show that the beneficiary holds a United States baccalaureate degree or a foreign equivalent degree. In response, the petitioner submits certificates from the institutions named above. An official of Meerut University states that the beneficiary “was a regular student during the years 1984-85, [and] 1985-86.” This letter is consistent with the beneficiary’s own claim to have studied at Meerut University for two years.

The director denied the petition, stating that the beneficiary’s degree from Meerut University is not the equivalent of a bachelor’s degree, and therefore the beneficiary does not hold a foreign equivalent degree to a United States baccalaureate. On appeal, counsel states that the director’s conclusions were erroneous, and that it is an “accepted and noncontroversial practice” to combine several lesser degrees or diplomas into a single aggregate that is collectively equivalent to a United States baccalaureate. Counsel argues that “the beneficiary’s foreign education is the equivalent of at least a baccalaureate degree in Computer Science.”

The regulations do not call for evidence that the alien’s “foreign education is the equivalent of at least a baccalaureate degree.” The regulations require a “foreign equivalent degree,” meaning a foreign degree which is equivalent to a United States baccalaureate. The regulations do not call for, or permit, “foreign equivalent degree(s)” or “educational experience equivalent to a degree.” The regulations also specify the amount of education and experience that qualify as the equivalent of a United States master’s degree, for aliens who do not hold an actual master’s degree. The regulations offer no such option for aliens who do not hold an actual bachelor’s degree. Thus, the structure of the regulations offers ample support for the position that the alien must hold a degree equivalent to a United States baccalaureate, and no support for the competing position that an alien can accumulate numerous disparate lesser degrees in lieu of a single equivalent degree.

The petitioner submits a new evaluation from Professor Orandel Robotham of Medgar Evers College. Like Mr. Silberzweig, Prof. Robotham asserts that the beneficiary “commenced his studies at [Meerut] University in 1983,” although both the beneficiary and university officials list his dates of attendance as 1984-1986. Prof. Robotham also agrees with Mr. Silberzweig that the beneficiary’s diploma from Meerut University “is indicative of the completion of three years of academic studies toward a Bachelor of Science Degree from an accredited US institution of higher education.” Prof. Robotham then discusses the beneficiary’s later short-term studies, and states “[b]y completing one year of bachelor’s-level study . . . at The National Institute of Information Technology . . . [the beneficiary] attained the equivalent of a major specialization in computer science. In my professional opinion, the combination . . . is equivalent to a Bachelor of Science Degree in Computer Science.” Nothing in Prof. Robotham’s evaluation contradicts the director’s finding that the beneficiary does not hold any degree that is equivalent to a United States baccalaureate.

Case law does not permit a three-year bachelor’s degree to 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>. 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 degree from Meerut University will not be considered the “foreign equivalent degree” to a United States baccalaureate degree for purposes of this preference visa petition. Counsel submits a copy of a letter dated January 7, 2003, from Mr. Efrén Hernández III, Director of the Business and Trade Services Branch of CIS’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. Hernández 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 persuasive. The succinct response of Mr. Hernández 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. Hernández’s 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. 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 or certain other major fields of study, and six months of experience, or a Bachelor of Science in the same field 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 degree from Meerut University is not a "United States baccalaureate degree or a foreign equivalent degree." That degree represents no more than three, and perhaps only two, years of university-level study. 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.