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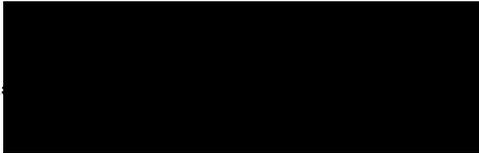


U.S. Citizenship
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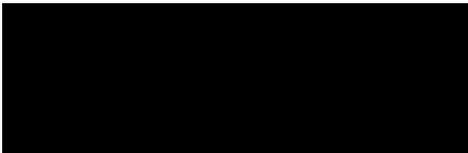


FILE: EAC 03 261 55322 Office: VERMONT SERVICE CENTER Date:

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

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a software development and consulting company. It seeks to employ the beneficiary permanently in the United States 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 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 found the petitioner had failed to establish that the beneficiary qualifies as a professional holding an advanced degree.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) states:

Advanced degree means any United States academic or professional degree or a foreign equivalent 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states:

(i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The issue to be determined in this matter is whether the beneficiary holds “a United States baccalaureate degree or a foreign equivalent degree.” The requirement of a “foreign equivalent degree” at 8 C.F.R. §

204.5(k) indicates that the alien must possess a single degree (rather than a combination of degrees or experience) that is, standing alone, equivalent to a U.S. baccalaureate.

On May 25, 2004, the director issued a notice requesting the petitioner to submit "an advisory evaluation of the beneficiary's formal education."

The petitioner responded by submitting an educational evaluation dated June 15, 2004 from [REDACTED] Indo-U.S. Technology and Educational Services (ITES), Inc. [REDACTED] initial evaluation states:

Academic Credentials Evaluated:

Bachelor of Commerce Degree in (Costing), Andhra University, India, 1976

Master's Degree in Business Administration (MBA), Andhra University, India, 1978

Honors Diploma in Systems Management, National Institute of Information Technology (NIIT), Hyderabad, India, 1994

Certificate in Oracle Financials – Including Business Productivity Applications and Customization, Fiber Tech (India) Private Limited, India, 1997

Certificate of Coursework in Oracle Financials and VB 5.0, InferData Computer Education, Hyderabad, India, 1998

* * *

Based on the reputation of the Andhra University, National Institute of Information Technology (NIIT), number of years of coursework, nature of coursework, it is my professional opinion that [the beneficiary's] academic credentials are equivalent to 3.5 years of academic studies towards a Bachelor's Degree in Computer Information Systems from an accredited college or university from the United States of America.

Analysis of Work Experience:

In addition, [the beneficiary] has over 5 years of progressively responsible Information Technology (IT) work experience. This work experience embodies the theoretical knowledge normally found in college level course work, with over 5 years of such work experience combined with his Bachelor of Commerce Studies, Master's Degree in Business Administration (MBA), Honors Diploma in Systems Management, and Certifications in Information Technology is deemed to be equivalent to a Bachelor's Degree in Computer Information Systems from an accredited college or university from the United States of America.

* * *

In summary, it is my professional opinion that [the beneficiary] has the equivalent of a Bachelor's Degree in Computer Information Systems from an accredited college or university in the United States of America.

The above credentials evaluation concludes that the beneficiary has the equivalent of a United States baccalaureate degree in Computer Information Systems based on a combination of factors (academic study and employment experience). [REDACTED] evaluation erroneously relies on nonimmigrant regulations rather than the pertinent immigrant regulations. We note here that the nonimmigrant regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which is irrelevant to the present case, states: "For purposes of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or experience must for demonstrated for each year of college training the alien lacks." The applicable immigrant regulation at 8 C.F.R. § 204.5(k)(3)(i), however, indicates that the alien must possess a single degree (rather than a combination of degrees or experience) that is the equivalent of a U.S. baccalaureate degree.

[REDACTED] June 15, 2004 evaluation states that that the beneficiary's "academic credentials are equivalent to 3.5 years of academic studies towards a Bachelor's Degree in Computer Information Systems from an accredited college or university from the United States of America." A United States baccalaureate degree, however, is generally found to require four years of education. See *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). In regard to the beneficiary's Bachelor of Commerce Degree from Andhra University, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree.¹ 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 in from Andhra University will not be considered the "foreign equivalent degree" to a United States baccalaureate degree for purposes of this preference visa petition.

On July 15, 2004, the director denied the petition, stating: "The requirements as described in 8 C.F.R. § 204.5(k)(3), relating to a professional holding an advanced degree, 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." Based on [REDACTED] June 15, 2004 educational evaluation, the director determined the petitioner had not established that the beneficiary meets the minimum requirement of a baccalaureate degree or its foreign equivalent.

On appeal, counsel states:

Since the petition was denied on the grounds that the beneficiary did not possess the U.S. equivalent of a Bachelor's Degree, the beneficiary has submitted a revised educational evaluation, which has evaluated

¹ 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).

only his academic credentials and not his work experience. The evaluator has opined that the beneficiary's education by itself is equivalent to a U.S. Bachelor of Science degree in Computer Science.

Contrary to counsel's observation, the evaluator concluded that the beneficiary's educational credentials were equivalent to a Bachelor's degree in "Computer Information Systems" rather than in "Computer Science."

The petitioner's appellate submission includes a revised educational evaluation from Dr. [REDACTED] dated August 9, 2004. The revised evaluation is almost identical to the June 15, 2004 evaluation, but it differs in its conclusion regarding beneficiary's educational credentials. [REDACTED] states:

Based on the reputation of the Andhra University, National Institute of Information Technology (NIIT), number of years of coursework, nature of coursework, it is my professional opinion that [the beneficiary's] academic credentials are equivalent to a Bachelor's Degree in Computer Information Systems from an accredited college or university from the United States of America.

* * *

This professional analysis is based upon [the beneficiary's] Bachelor of Commerce Degree in (Costing), Master's Degree in Business Administration, Honors Diploma in Systems Management, and Certificate in Oracle Financials – Including Business Productivity Applications and Customization, and Certificate of Coursework in Oracle Financials and VB 5.0.

[REDACTED] offers no explanation regarding his earlier conclusion that the exact same academic credentials were "equivalent to 3.5 years of academic studies towards a Bachelor's Degree in Computer Information Systems from an accredited college or university from the United States of America." The educational evaluation provided on appeal simply omits the phrase "... 3.5 years of academic studies towards a ..."

In regard to the two conflicting educational evaluations from Dr. [REDACTED] 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.

By combining the beneficiary's three-year Bachelor of Commerce Degree in Costing with, for example, his diploma in Systems Management (two entirely different fields of study), Dr. [REDACTED] August 9, 2004 evaluation concludes that the beneficiary's educational qualifications are the foreign equivalent of a U.S. "Bachelor's Degree in Computer Information Systems."

Nothing in the legislative history, however, suggests that an alien may qualify under section 203(b)(2)(A) of the Act with anything less than a full bachelor's degree. In examining the legislative history, we note that in the Conference Report to the Immigration Act of 1990 that passed this legislation, the conferees stated:

The conferees intend that the equivalent of an advanced degree be defined to mean a bachelor's degree plus at least five years' experience in the particular profession. In considering equivalency in category

2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions.

H.R. Conf. Rpt. 101-955 at 121 (Oct. 26, 1990).

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).

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 lesser degrees and certifications, 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 conclusion, because the petitioner has not established that the beneficiary possesses a "United States baccalaureate degree or a foreign equivalent degree" or a "foreign equivalent degree above that of baccalaureate," it has not been established that he qualifies as a professional holding an advanced degree under section 203(b)(2) of the Act.

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 appeal is dismissed.