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FILE: LIN 06 159 52489 Office: NEBRASKA SERVICE CENTER Date: **JAN 09 2008**

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 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.

3 Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained; the petition will be approved.

The petitioner provides information technology consulting services. It seeks to employ the beneficiary permanently in the United States as a programmer/analyst 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, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the alien employment certification. Specifically, the director determined that the beneficiary did not possess “a United States baccalaureate degree, or an advanced degree, or its foreign equivalent.”

On appeal, counsel submits a brief and additional evidence, much of which is not persuasive or relevant for the reasons discussed below. Nevertheless, the excerpt from the April 2005 issue of *ADSEC News* is consistent with the initial evaluation of the petitioner’s credentials.

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).

As discussed in more detail below, federal circuit courts have upheld our authority to evaluate whether the beneficiary is qualified for the classification sought and meets the job requires specified on the alien employment certification.¹

The beneficiary possesses a foreign three-year Bachelor of Commerce degree from the University of Pune and a two-year Master of Computer Management from the same institution. Thus, the issues are whether either degree qualifies the beneficiary for the classification sought and the job as specified on the alien employment certification.

Eligibility for the Classification Sought

As noted above, the ETA Form 9089 in this matter is certified by DOL. DOL’s role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act, 8 U.S.C. §1182(a)(5)(A)(i); 20 C.F.R. § 656.1(a).

¹ *But cf. Hoosier Care, Inc. v. Chertoff*, 482 F. 3d 987 (7th Cir. 2007) relating to a lesser classification than the one involved in this matter and relying on the regulation at 8 C.F.R. § 204.5(l)(4), a provision that does not relate to the classification sought here.

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. See *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983).

On appeal, the petitioner submits two new evaluations from [REDACTED] of Career Consulting International, one for each of the beneficiary's degrees. [REDACTED] purports to assign the number of credits for each course individually without any explanation as to how she determined the number of credits per course, which are not listed on the petitioner's transcript.² [REDACTED] equates the beneficiary's three-year bachelor of commerce degree to a U.S. Bachelor of Science degree with a major in business and his two-year Master's Degree to a U.S. Master of Science degree with a major in computer science.

Some of the material submitted on appeal in support of [REDACTED] evaluation of the beneficiary's bachelor of commerce degree is not consistent with her evaluation. For example, while [REDACTED] quotes a paragraph from a UNESCO report, she quotes the paragraph out of context, omitting the second half of the final sentence. (The petitioner submitted 138 pages of this report, only two of which are relevant.) The UNESCO recommendation, in context, relates to admission to graduate school and training programs and eligibility to practice in a profession. Nowhere does it suggest that a three-year degree must be deemed equivalent to a four-year degree for purposes of qualifying for a class of individuals defined by statute and regulation as eligible for immigration benefits. More significantly, the recommendation does not define "comparable qualification." At the heart of this matter is whether the beneficiary's degree is, in fact, the foreign equivalent of a U.S. baccalaureate. The UNESCO recommendation does not address this issue.

In addition, the article "Does the Value of Your Degree Depend on the Color of Your Skin?" coauthored by [REDACTED] and [REDACTED] acknowledges considerable opposition to the proposition that an Indian three-year baccalaureate is equivalent to a U.S. baccalaureate, stating: "None of the members of N.A.C.E.S. who were approached were willing to grant equivalency to a bachelor's degree from a regionally accredited institution in the United States, although we heard anecdotally that one, W.E.S. had been interested in doing so." In addition, [REDACTED] and [REDACTED] "Three-Year Indian Undergraduate Degrees: Recommendations for Graduate Admission Consideration," *ADSEC NEWS* (April 2005) does not recommend that all, or even most, Indian three-year degrees be considered for graduate admission in the United States without additional education. Finally, a United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Regl. Commr. 1977).

² The petitioner did submit three letters, one from another credentials evaluator, one from Gadge Maharaj College regarding Mumbai University and a third from a professor at Mumbai University, asserting that Indian three-year degree programs involve 120 credit hours. These anecdotal letters are not supported by official course credit listings.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-96. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

[REDACTED] evaluation of the beneficiary's bachelor of commerce degree is not consistent with some of the other material submitted on appeal. Thus, we will afford her evaluation of the beneficiary's Master's degree little weight. Nevertheless, the article by [REDACTED] and [REDACTED] provides that a "three-year bachelor's degree and a two-year Indian master's degree (with at least 50% in marks obtained) from a[n] NAAC accredited institution should be considered comparable to a U.S. master's degree." This assertion is consistent with the original evaluation from Morningside Evaluations and Consulting, which concluded that the beneficiary's Master's degree was equivalent to a U.S. Master's degree.

In light of the above, we are persuaded that the beneficiary qualifies for the classification sought and the job requirements stated on the ETA Form 9089.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.