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

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

AUG 06 2003

File: LIN 03 016 50047 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

Petition: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER: [REDACTED]

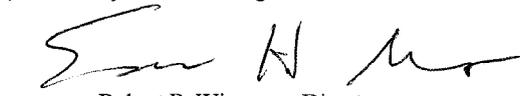
INSTRUCTIONS:

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 the Bureau of Citizenship and Immigration Services (Bureau) 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 preference 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 development and consulting firm. It seeks to employ the beneficiary permanently in the United States as a software engineer/SAP consultant. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the requirements for the proffered position as stated on that approved Form ETA 750 labor certification.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(I) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

8 CFR § 204.5(1)(3)(ii) states:

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show

that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary has the qualifications stated on the ETA 750 labor certification. The ETA 750 labor certification submitted in this case clearly states that the proffered position requires that the beneficiary have four years of college leading to a bachelor of science degree in computer science/computer engineering or an equivalent foreign degree.

With the petition counsel submitted evidence of the petitioner's relevant employment, copies of the petitioner's diplomas and the report of an educational evaluator dated November 15, 1999.

A diploma from Apple Industries states that the beneficiary successfully completed a course in Fourth Generation Language, including dBase III+, Lotus 1-2-3, and Wordstar in August of 1990. A diploma dated January 1, 1993 indicates that the beneficiary completed a course in CICS, DB2, VSAM, MVS/JCL, and VS COBOL II at Old Software Technologies Private Limited.

A diploma awarded by the Board of Technical Examinations, Maharashtra State, India, shows that the petitioner passed the examination pertinent to computer technology in the second class. An accompanying transcript shows the classes the petitioner took at the Bombay Institute of Technology. That transcript indicates that the beneficiary was enrolled in a three-year program.

The accompanying educational evaluation states that the beneficiary's education at the Bombay Institute of Technology and his passing the computer technology examination given by the Board of Technical Examinations are equivalent to graduation from high school and an associate's degree in computer technology from a community college in the United States. That report also states that the beneficiary's education and experience are the equivalent of a bachelor's degree in computer information systems.

The Director, Nebraska Service Center determined that the evidence submitted did not establish that the beneficiary has the minimum qualifications for the proffered position and, on February 12, 2003, denied the petition. The director noted that the Form ETA-750 requires a minimum of a four-year bachelor's degree, whereas the beneficiary's degree is a three year degree.

On appeal, counsel argues that the beneficiary's experience and education, taken together, are equivalent to the requisite bachelor's degree. Counsel further argues that the regulations do not preclude considering that equivalence in the context of a

petition for a skilled worker pursuant to Section 203(b) (3) (A) (I) of the Act.

Counsel also provides two additional educational evaluations. Those evaluations, both dated March 14, 2003, state that the petitioner's three-year degree is the equivalent of a four-year Bachelor of Science degree awarded by a United States university.

A foreign three-year bachelor's degree is not a "foreign equivalent degree" to a United States bachelor's degree. A United States bachelor's degree generally requires 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 just three years of higher education. A bachelor's degree in a professional field of study such as agriculture, dentistry, engineering, pharmacy, technology, or veterinary science generally requires four years of higher 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 bachelor's degree from India might reasonably be deemed to be the "foreign equivalent degree" to a United States bachelor's 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 bachelor's 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 diploma from the Bombay Institute of Technology will not be considered the "foreign equivalent degree" to a United States bachelor's degree for purposes of this preference visa petition.

The petitioner does not have a United States Bachelor of Science in computer science/computer engineering or an equivalent foreign degree. Counsel asserts, however, that the petitioner's three-year degree, together with his experience, is the equivalent of a four-year United States Bachelor of Science degree.

The regulations pertinent to H1B nonimmigrant petitions explicitly permit the substitution of experience for education and a degree. The laws and regulations applicable to the visa category in the instant case sanction no such substitution of experience for education and a degree.

The result in this matter is the same whether the petition is analyzed as a petition for a professional under Section 203(b) (3) (A) (ii) of the Act or as a petition for a skilled worker

under Section 203(b)(3)(A)(i) of the Act.

If the petition is for a professional, then, pursuant to CFR § 204.5(l)(3)(ii)(C) the petitioner must show that the beneficiary has a bachelor's degree in the field of the proffered position which, in this case, is computer science/computer engineering. The petitioner would also be obliged to show that such a degree is a prerequisite for entry into the occupation.

If the petition is for a skilled worker then, pursuant to 8 CFR § 204.5(l)(3)(ii)(B), the petitioner is obliged to demonstrate that the beneficiary meets the educational, training or experience requirements stated on the Form ETA-750. The Form ETA-750 states that the beneficiary must have four years of college leading to a bachelor of science degree in computer science/computer engineering.

However the petition is analyzed, the beneficiary does not have the requisite four years of college leading to a bachelor's degree in computer science/computer engineering.

Neither section 203(b)(3)(A)(i) of the Act, nor section 203(b)(3)(A)(ii) of the Act, nor the associated regulations allows the substitution of experience, in whole or in part, for the requisite education as stated on an approved labor certification. Further, this office is unable to alter the terms of an approved labor certification. In the absence of evidence that the beneficiary has a United States bachelor's degree in computer science/computer engineering or an equivalent foreign degree, the instant 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 met that burden.

ORDER: The appeal is dismissed.

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