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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

SEP 29 2003

File: WAC 02 066 52053 Office: CALIFORNIA SERVICE CENTER Date:

IN RE: Petitioner:   
Beneficiary:

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:

**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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is an information technology development and consulting firm. It seeks to employ the beneficiary as a programmer/analyst. As required by statute, the petition is accompanied by certification from the Department of Labor. The director denied the petition because she determined that the beneficiary's three-year program resulting in a Bachelor of Science degree is not the foreign equivalent to a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's three-year bachelor's degree is sufficient to meet the requirements of the labor certification.

In pertinent part, Section 203(b)(3)(A)(i) of 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 or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is March 13, 2000.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification Form ETA-750A, items 14 and 15 set forth the minimum education, training, and experience that an applicant must have for the position of programmer/analyst. In the instant case, the following information appears Items 14 and 15:

14.	Education	
	College	X
	College Degree Required	Bachelors
	Major Field of Study	Comp. Science, Engineering, Mathematics or Business
	Experience	
	Job Offered	2 yrs.
	Related Occupation	Software Development Experience

15. Other Special Requirements  
Not Applicable

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submits a copy of the beneficiary's Bachelor of Science in Applied Sciences degree from Bharathiar University, India conferred upon him on September 5, 1995. The grade transcripts submitted with the diploma indicate that the beneficiary's degree resulted from a three-year undergraduate curriculum. The record also contains evidence that the beneficiary completed computer training in java programming in the spring of 2000 at California State Polytechnic University in Pomona, California.

A December 2001 academic evaluation from [REDACTED] an academic and work experience consultant, was also submitted in support of the petition. This evaluation states that the beneficiary's academic studies at Bharathiar University "satisfied similar requirements to the completion of three years of academic study toward a Bachelor of Science Degree from an accredited institution of tertiary education in the United States." It concludes that the beneficiary's seven years and one month of work experience in computer science, "considered together with his prior studies at Bharathiar University indicate that [the beneficiary] satisfied similar requirements to the completion of a Bachelor of Science Degree in Computer Science from an accredited institution of tertiary education in the United States."

The director denied the petition, concluding that the beneficiary's three-year bachelor's degree is not an acceptable equivalency for a United States baccalaureate degree. We concur. It is noted that India's educational degree structure provides for both three-year and four-year bachelor's degree programs. Bachelor degrees in the arts, commerce, or the sciences may be earned after three years of higher education. A bachelor's degree in fields such as agriculture, dentistry, engineering, pharmacy, technology, and veterinary science, generally require 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, 2001) (<http://www.education.nic.in/htmlweb/higedu.htm>).

On appeal, counsel contends that 8 C.F.R. § 204.5(l)(2) states that a "'professional' position is 'any occupation for which a United States baccalaureate degree or its foreign equivalent' is the minimum requirement for entry into the occupation." Counsel is not persuasive. The regulation at 8 C.F.R. § 204.5(l)(2) specifically defines a professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent *degree* and is a member of the professions." (Emphasis added). In evaluating a beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific college degree. In this case, the labor certification plainly requires that the job candidate have a bachelor's degree in one of four specified fields of study.

A combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a United States baccalaureate degree, is not a foreign equivalent bachelor's degree. If supported by a proper credentials evaluation, a four-year baccalaureate

degree from India could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, Dr. [REDACTED] evaluation provides that the beneficiary's three years of academic study at Bharathiar University represents three years of university study in the United States, rather than a bachelor's degree. In order to conclude that the beneficiary holds the requisite bachelor's degree, the evaluation erroneously combined the beneficiary's three years of study and subsequent work experience. We note that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, 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 similar reasoning, it cannot be concluded that the beneficiary's three-year Bachelor of Science degree from Bharathiar University is a foreign equivalent degree to a United States baccalaureate degree.

Counsel argues that the number of years of college is not specifically designated in the labor certification and that the only reasonable inference that could be drawn from the application as a whole is that the position requires a three-year bachelor's degree. Counsel presents no authority to support the assertion that a bachelor's degree requirement as set forth by a labor certification approved by the United States Department of Labor can be satisfied by a three-year foreign degree undergraduate course of study. As noted previously, by its own terms, Dr. [REDACTED] academic evaluation does not support this assertion.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as required by the terms of the labor certification.

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.