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

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ADMINISTRATIVE APPEALS OFFICE  
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*Bl*



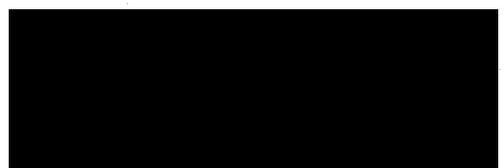
File: LIN 02 198 50505 Office: NEBRASKA SERVICE CENTER

Date: **APR 07 2004**

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, Nebraska 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 computer service and integrator firm. It seeks to employ the beneficiary as a computer support specialist. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary's education 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 educational credentials are 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 October 2, 2001.

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 computer support specialist. In the instant case, item 14 describes the "college degree required" as a "Bachelor's Degree or equivalent." The major field of study must be computer information systems or computer science/engineering. The applicant must also have two years employment experience in the job offered or two years experience in a related position of technical customer support.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submits a copy of a transcript from the Technical Examinations Board, Rajkot, Gujarat State, India indicating that the beneficiary received a diploma in electronics and radio engineering in April 1980. The record also contains a copy of a 1984 certificate from the "Baroda Productivity Council and Alembic Computer

Centre" reflecting that the beneficiary completed a computer training course in Cobol programming, as well as several certificates of excellence in customer service that the beneficiary received from Zenith Computers Limited in Bombay, India.

A December 1998 evaluation from the Foundation for International Services, Inc. was also submitted in support of the petition. This evaluation states:

In summary, it is the judgment of the Foundation that [the beneficiary] has the equivalent of graduation from high school in the United States, an associate's degree in electronics and communication engineering technology (2 years) from a accredited community college in the United States and has, through the expert opinion letter from Dr. Prins of Seattle Pacific University, as a result of his academic and work experience, an educational background the functional equivalent of an individual with a bachelor's degree in computer information systems from an accredited college or university in the United States.

It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides:

[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The director denied the petition, concluding that the beneficiary's educational credentials are not an acceptable equivalency for a United States baccalaureate degree. The director noted that the labor certification does not indicate that work experience can be submitted in lieu of formal education. The AAO concurs. The approved labor certification states that the proffered position requires a bachelor's degree or equivalent.

On appeal, counsel asserts that the labor certification's requirements should be interpreted as a bachelor's degree or the "work equivalency" of a bachelor's degree.

The AAO cannot conclude that the requirements of this labor certification allow employment experience to equate to a U.S. bachelor's degree. Rather, in this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. 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. *Id.* at 245. 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, the record reflects that the beneficiary's formal education consists of far less than a four-year curriculum, although the evaluation suggests that the beneficiary's diploma from the Technical

Examinations Board and subsequent employment experience should be considered as the equivalent of a baccalaureate degree.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a skilled worker, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree in computer information systems, computer science, or engineering, or an equivalent foreign degree.

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.