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U.S. Department of Homeland Security  
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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: WAC 02 083 53227 Office: CALIFORNIA SERVICE CENTER Date: APR 23 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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

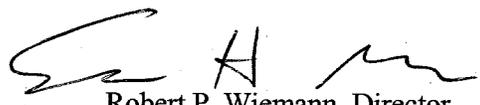
ON BEHALF OF PETITIONER:  
[Redacted]

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**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a county government. It seeks to employ the beneficiary permanently in the United States as a programmer- analyst. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

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, at the time of petitioning for classification under this paragraph, hold baccalaureate degrees and who are members of the professions.

The issue is whether the petitioner has established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification as of the petition's priority date. In this case, the priority date is January 24, 2001.

The Form ETA 750, in block 14, detailed the minimum education, training, and experience to perform the job. It specified a bachelor's degree in engineering with four years of college and two to four (2-4) years of experience in the job offered or the related occupation of analysis, development, and implementation of computer programs.

With the petition, the petitioner submitted an educational evaluation from the Foundation for International Services, Inc., dated January 24, 2000, which stated that the beneficiary's Bachelor of Science degree in Engineering from the University of Hong Kong is the equivalent of a bachelor's degree in engineering from an accredited college or university in the United States.

In a notice of intent to deny, dated April 10, 2002, the director requested evidence of a four-year bachelor's degree as specified in the ETA 750. Counsel responded with a brief and contended that the regulation nowhere specifies that a bachelor's degree must be four years in duration.

The director determined that, because the beneficiary's baccalaureate course of study was completed in three, not four, years, the petitioner did not establish that the beneficiary met the qualifications for the position as stated in the labor certification. The director, therefore, denied the petition.

On appeal, counsel submits a brief and another evaluation which states that based on his credentials the beneficiary has the equivalent of at least a bachelor's degree in civil engineering at an accredited institution in the United States. Counsel again asserts that CIS regulations do not require that a bachelor's degree program must be four years in duration.

The record in this case shows that the beneficiary attended the University of Hong Kong from September 1980 through July 1983, and on November 16, 1983, received a Bachelor of Science degree in Engineering. The duration of studies, therefore, amounted to three years. A check by AAO of the University of Hong Kong website indicates that the duration of study for a bachelor of science in engineering is indeed three years.

The evaluation in the instant case clearly states that the beneficiary's foreign degree is equivalent to a United States bachelor's degree.

In *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977), the regional commissioner found that a B.S. (Special) degree in chemistry from a university in India which was obtained in three years was not the equivalent of a bachelor's degree earned in the United States. The regional commissioner noted that it normally takes four years to obtain a baccalaureate degree at a United States university. The regional commissioner also noted, however,

that at that time according to the United States Department of Health, Education, and Welfare, a B.S. degree in chemistry from that same university in India was the equivalent of a B.S. degree in the United States. There is no mention of the duration of this latter degree. The regional commissioner distinguished the three-year B.S. (Special) degree, and dismissed the appeal.

The case at hand is distinguished from *Shah* in that in this case there was an independent evaluation of the beneficiary's foreign degree. The evaluation of the beneficiary's bachelor's degree in engineering was based on education alone, and not on a combination of education and experience. *Shah* states that a bachelor's degree in the United States is "normally" obtained in four years. It does not say that this is universally the case, nor does it say that all three-year foreign baccalaureate degrees cannot be found to be equivalent to United States baccalaureate degrees. The AAO concludes, therefore, that the beneficiary's foreign bachelor of science degree in engineering received after three years of study is the equivalent of a United States bachelor of science degree in engineering which might normally or possibly be obtained in four years.

The problem with this case is that the labor certification application clearly requires that the beneficiary have four years of college education. As noted above, the record clearly shows that the beneficiary completed only three years of college. A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The beneficiary in this case does not have all the years of education specified on the labor certification. The petitioner has, therefore, not established that the beneficiary fully meets the educational requirements 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 met that burden.

**ORDER:** The appeal is dismissed.