



U.S. Citizenship
and Immigration
Services

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JUN 15 2004

FILE: LIN 02 281 53557 Office: NEBRASKA SERVICE CENTER

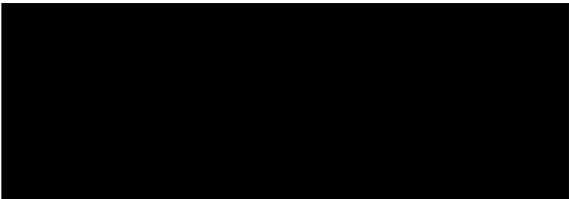
Date:

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 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 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. The petitioner is a computer software-consulting firm. It seeks to employ the beneficiary as a MIS analyst. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. 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 asserts that the beneficiary has the necessary credentials to meet the qualifications set forth in the approved labor certification.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), 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. 8 C.F.R. 204.5(d); *Matter of Wing’s Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 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 MIS analyst. In the instant case, item 14 shows the required number of years and type of educational background and experience an applicant for the position must have. It states the following:

- | | | |
|-----|----------------------------|--|
| 14. | Education | |
| | College | 4 |
| | College Degree Required | Bachelor’s |
| | Major Field of Study | Comp. Sci, Info Sys, Business, Accounting |
| | Experience | |
| | Job Offered | 2 |
| | Related Occupation | 2* Analyst, Programmer, Mgmt. Accountant or any occ.
w/exp. in item 15* |
| 15. | Other Special Requirements | |

*Related exp. to include 2 yrs. exp. planning financial/accounting & inventory management MIS applications for client/server ERP environments, using knowledge of financial analysis, cost & inventory accounting principles. To include 6 mos. exp. applying knowledge of Oracle & Visual Basic programming.

The record indicates that the beneficiary holds a Bachelor of Commerce degree received in 1980 from the

University of Madras, India following a three-year course of study. He also obtained an associate membership in the Institute of Chartered Accountants of India by passing a final examination held in May 1985. An October 6, 1996, evaluation from the "Foreign Academic Credentials Service, Inc. concludes that these two credentials, when combined, are equivalent "to a bachelor's degree received from an accredited college or university in the United States." Another evaluation from "Morningside Evaluations and Consulting," dated December 16, 2002, was submitted to the record in response to the director's request for additional evidence in support of the beneficiary's educational credentials. This evaluation states that the beneficiary's work at the University of Madras was "substantially similar to those required toward the completion of three years of academic coursework leading to a Bachelor's degree" from an accredited U.S. academic institution. It also surmises that a combination of his Bachelor of Commerce degree and the passage of the Institute of Chartered Accountants of India is the equivalent to a "Bachelor Arts in Accounting degree, from an accredited institution of higher education in the United States."

The director denied the petition, finding that petitioner had failed to demonstrate that the beneficiary possessed a foreign bachelor's degree equivalent to a United States baccalaureate.

On appeal, counsel submits a third evaluation from "The Trustforte Corporation," dated March 4, 2003. This evaluation states that the beneficiary's receipt of the Final Examination Certificate from the Institute of Chartered Accountants of India represents one hundred eighty hours of classes and thirty-five hours of work experience completed during ten months of one year. It concludes that the beneficiary's passage of the final examination is the equivalent to a Bachelor of Science degree in accounting at an accredited U.S. university. Counsel cites this evaluation in asserting that the attainment of membership in the Chartered Accountants of India following passage of this examination is the equivalent of a U.S. bachelor's degree in accounting. Counsel, asserting that different service centers have different interpretations on this issue, also requests that if the petition is not approved, that it be held in abeyance until "field guidance is issued."

The appeal will be adjudicated accordingly and will not be held in abeyance. The AAO's authority over the service centers is comparable to the relationship between a court of appeals and a district court. The AAO is not bound to follow contradictory decisions of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd*, 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). As discussed below, this office has consistently held that a combination of degrees cannot serve as "a" foreign degree equivalent to a U.S. baccalaureate degree.

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 regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) provides in pertinent part:

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

Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States degree, CIS will recognize a foreign equivalent degree to a United States baccalaureate. In this case, however, the beneficiary's foreign bachelor's degree in commerce has not been shown to be the equivalent to a United States bachelor's degree in computer science, information systems, business, or accounting as set forth on the ETA-750A. The initial two evaluations from Foreign Academic Credentials Service, Inc. and Morningside Evaluations and Consulting determined that the beneficiary's bachelor's degree, when combined with the passage of the Institute of Chartered Accountants of India's final examination is the equivalent to a United States baccalaureate degree in accounting.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is quite clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Counsel's assertion on appeal that the beneficiary's passage of the final examination of the Institute of Chartered Accountants of India is, standing alone, the equivalent of a United States baccalaureate degree is also not persuasive in view of its inconsistency with the other evaluations and the limited duration of coursework that is apparently required to qualify to take the test. It is noted 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. In the present matter, the conflicting evaluations are deemed to be less than probative in evaluating the beneficiary's foreign education.

The Trustforte Corporation indicates that the Institute of Chartered Accountants for India is "a nationally-recognized professional association for the accounting profession in India, which grants membership to individuals who have achieved advanced standing in the profession and have passed the requisite qualifying examinations." Thus, the Institute does not appear to be a degree-awarding institute of higher learning. The beneficiary himself listed his membership under "licenses" not "degrees" on the Form ETA 750B. Professional certification, even as the result of an examination, does not meet the regulatory requirement of a foreign equivalent *degree*.

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. The terms of the labor certification in this case do not define or accept any foreign equivalent degree less than a bachelor's degree. The only amendments to the degree are offered as alternatives to the field of study as set forth in item 14. CIS may not ignore a term, nor impose additional requirements in reviewing a labor certification. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983).

Based on the evidence submitted, the AAO concurs with the director that the petitioner has not established that the beneficiary possesses a United States bachelor's degree or a foreign equivalent 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.

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ORDER: The appeal is dismissed.