

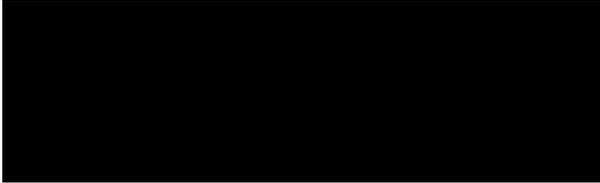
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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. A3042,
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U.S. Citizenship
and Immigration
Services

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APR 15 2005

FILE:



Office: NEBRASKA SERVICE CENTER

Date:

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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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is an engineering consulting firm. It seeks to employ the beneficiary as a systems 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, counsel asserts that the beneficiary has the necessary educational 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. See 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 June 7, 2002.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, Citizenship and Immigration Services (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, item 14 shows the required number of years and type of educational background and experience an applicant for the position must possess. It states the following:

- 14. Education
 - College 4
 - College Degree Required B.S. or equiv. degree
 - Major Field of Study Computer Science, Engineering, Math, Business Admin. or equiv.
 - Experience
 - Job Offered 3 yrs. or
 - Related Occupation 3 yrs. as Business Analyst, Sr. Sys. Analyst, Principal Consultant or equiv.

- 15. Other Special Requirements
 - Experience must include design, development and enhancement, integration and implementation of applications using Oracle Applications, Oracle Financial Applications, Oracle Financial Application, SQL Forms and Reports. Relocation possible.

As evidence of the beneficiary's formal education, the petitioner initially submitted a copy of a diploma from Bangalore University, Bangalore, India signifying that the beneficiary was awarded a Bachelor of Commerce degree on February 1, 1992. Accompanying grade transcripts indicate that the degree represented three years

of study from 1989 to 1991. The petitioner also offered a copy of a "Certificate of Membership," issued by the Institute of Cost and Works Accountants of India and awarded to the beneficiary on February 16, 1998. Documents submitted with this certificate suggest that it was based on the passage of an intermediate examination held in December 1989 and June 1990 and the passage of a final examination held in December 1991.

The petitioner further offered a copy of an academic evaluation, dated March 10, 2002, from the Multinational Education & Information Services, Inc. It is signed by [REDACTED]. The evaluation states that the beneficiary's Bachelor of Commerce degree is the equivalent of three years of undergraduate studies in business administration at an accredited university in the United States. It then states that the passage of the final examination of the Institute of Cost and Works Accountants of India represents one year of academic study in accounting. The evaluation concludes that the beneficiary's Bachelor of Commerce degree and the passage of the Institute of Cost and Works examination resulting in membership in the Institute of Cost and Works Accountants of India, combined, and is the equivalent of a bachelor's degree in business administration from an accredited university in the United States.

On July 30, 2003, the director requested additional evidence from the petitioner establishing that the beneficiary has the required education as set forth in the ETA 750A. The director advised the beneficiary that the a foreign equivalent degree should not include experience gained through employment nor represent a series of diplomas or certificates.

In response, counsel for the petitioner submitted an educational evaluation report, dated August 14, 2002, from [REDACTED] of The Trustforte Corporation [REDACTED] stated that the Institute of Cost and Works Accountants of India is a nationally recognized professional association of the accounting profession and grants membership to individuals who have achieved advanced standing in and have passed the requisite qualifying examination. [REDACTED] found that the combination of the beneficiary's Bachelor of Commerce degree and her successful completion 180 hours of classes culminating in the passage of the final professional examination and receipt of the Final Examination Certificate in 1992 represents the equivalent of a baccalaureate degree in business administration with a concentration in accounting from an accredited institution of higher education in the United States.

The director denied the petition on October 20, 2003. The director found that the evidence submitted did not meet the requirements of the approved labor certification because the beneficiary does not possess a U.S. Bachelor of Science degree or an equivalent foreign degree.

On appeal, the counsel resubmits copies of the documents previously offered to the record and additionally provides copies of a course catalog from Kent State University describing its requirement of 121 semester credit hours for a business administration degree. Counsel asserts that the beneficiary's completion of 180 hours of studies in India should be deemed sufficiently comparable. Counsel maintains that the education evaluations support the conclusion that the beneficiary's credentials are sufficient to establish that she has a baccalaureate degree in business administration.

Counsel's contention is not persuasive. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) also 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.

We find that "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration or study" is applicable to what constitutes evidence of a degree. Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States bachelor's degree, CIS will recognize a foreign equivalent bachelor's degree to a United States baccalaureate. The above regulation uses the singular description of a foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

On appeal, counsel also submits a copy of a letter dated January 7, 2003 from [REDACTED] of the INS Office of Adjudications to counsel in another case, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). Mr. Hernandez states that he believes that a single foreign degree is not required to satisfy this equivalency.

In this case, the approved labor certification explicitly states that the proffered position requires a Bachelor of Science degree or equivalent degree, not a combination of experience, cumulative total of credit hours, certificates or degrees, which could be considered the equivalent of a bachelor's degree. Even if viewed as a petition for a skilled worker, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides that the evidence must show that the alien has the education, training or experience, and any other requirements of the individual labor certification. This labor certification does not define or accept any equivalency less than a bachelor's degree. It is also noted that [REDACTED] letter involved the interpretation of a different regulatory provision than that guiding the present case, i.e., an equivalent of a U.S. advanced degree, not a baccalaureate degree. Moreover, private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

It is further noted that although the preamble to the publication of the final rule at 8 C.F.R. § 204.5 in 1991 specifically dismissed the option of equating "experience alone" to the required bachelor's degree for a second preference classification as an advanced degree professional or as a professional under the third classification, similar reasoning would also prohibit the acceptance of an equivalence in the form of multiple lesser degrees, professional training, or any other level of education deemed to be less than a "foreign equivalent degree" to a United States baccalaureate degree. *See* 56 Fed. Reg. 60897 (Nov. 29, 1991). Therefore, the beneficiary's combination of certificates and Bachelor of Commerce degree from the

Bangalore University do not represent a Bachelor of Science degree. The record does not contain an official college or university record showing that the beneficiary possesses a baccalaureate degree in any of the fields of study named on the approved labor certification from any institution of higher learning either abroad or in the United States as required by 8 C.F.R. § 204.5(l)(3)(ii)(C).

As noted above, both academic evaluations use the combination of the beneficiary's passage of the final examination from the Institute of Cost and Works Accountants of India and her baccalaureate degree from Bangalore University to conclude that she has a the U.S. equivalent of a bachelor's degree in business administration. It cannot be concluded that these evaluations are probative of the beneficiary's credentials as required by the terms of the labor certification. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

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 of Science or equivalent degree in computer science, engineering, math, business administration or equivalent as required by the terms of the labor certification. Therefore, the beneficiary is not eligible for the visa classification sought.

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.