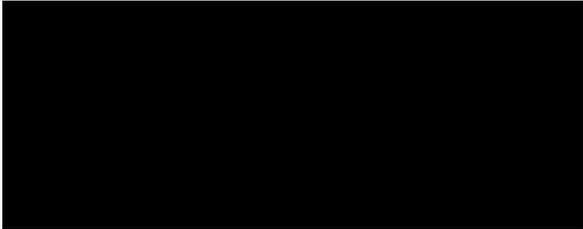


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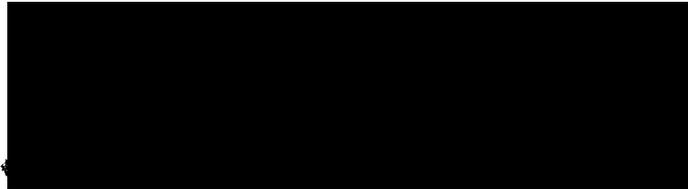
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: APR 19 2005
LIN 03 117 52539

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 preference 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 is a telecommunications firm. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the petitioner applied and denied the position accordingly.

On appeal, counsel submits a brief and additional evidence.

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 granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for granting 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 nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(1)(2) states, in pertinent part:

“Professional means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.”

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) states, in pertinent part:

Professionals. 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.

If the petition is for a professional pursuant to 8 C.F.R. § 204.5(1), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted for processing on September 16, 2002. The Form ETA 750 states that the proffered position requires a “Bachelor's degree or foreign equivalent in “Computer Science, Information Systems and /or Business” and four years of work experience. The ETA also specified experience must include use of Sybase ASE, Sybase, Sun, and SQL.

With the petition, counsel submitted an educational evaluation report from Education Evaluation and Immigration Services, Potomac, Maryland, dated January 23, 2000. That report states that, on December 12, 1997, the beneficiary received a Bachelor of Science degree in commerce from the University of Mumbai,

with major studies in financial accounting and auditing. The evaluator stated that the bachelor's program required three years of university level education. The evaluator stated that bachelor degree programs in India are very intense and in terms of number of lecture hours, a student completes the equivalent of the number of credit hours needed to complete a bachelor's degree at a college or university in the United States. The evaluator then stated that the beneficiary was awarded the title of GNIIT in Systems Management in 1998 by NIIT, National Institute of Information Technology. The evaluator described the NIIT program as a premier non-recognized institution of higher learning, and stated the NIIT program was the equivalent of at least two years of education at an accredited university in the United States. The petitioner also submitted six transcripts for six sections of the NIIT training that described both coursework and professional practice sessions from 1995 to September 1998. Of the six transcripts, only two were for activities after the beneficiary graduated from the University of Mumbai, the two professional practice semesters in Mumbai dated May and September 1998. The evaluation report indicated that the beneficiary's studies at those two institutions, taken together, are equivalent to a bachelor of science degree in business with a major in information services from an accredited institution in the United States. Finally, the petitioner submitted two certificates for computer training in which the beneficiary participated in, dated February and December 2000.

Because the director deemed the evidence submitted insufficient to demonstrate that the beneficiary had the requisite academic credentials for the position, on August 28, 2003, the director requested additional evidence pertinent to that ability. The director specifically requested that the petitioner submit evidence that the beneficiary obtained the required four years of college education, and earned a bachelor's degree (or foreign equivalent) with major studies in computer science, information systems and/or business.

In response, counsel asserts that the Form ETA 750 requires a four-year U.S. bachelor's degree or its foreign equivalent, and that the petitioner did not state on the ETA 750 that it required a four-year foreign bachelor's degree program. Counsel stated that by putting it accepted the foreign equivalent of a four-year U.S. bachelors, degree on the ETA 750, the petitioner acknowledged the differing educational systems throughout the world and stated its requirement to be the number of years and the type of education gained through a foreign educational system which is the equivalent of a four-year U.S. bachelor's degree. Counsel stated that as affirmed by the educational evaluation, the beneficiary attended the University of Mumbai for three years and NIIT for over two years. Counsel stated that based on the evaluation, the beneficiary has completed over four years of university level education. Counsel further stated that because the petitioner stated on eh ETA 750 that it required either a four-year U.S. bachelor's degree in business or the foreign equivalent of a U.S. bachelor's in business and because the beneficiary has the equivalent of a four-year U.S. bachelor's degree in business based on the equivalency of his foreign bachelor degree and the equivalency of all his foreign university-level studies, the petition should be approved.

Counsel also stated that there is no basis for the Citizenship and Immigration Services (CIS) conclusion that only one foreign degree in and of itself must be equivalent to a U.S. baccalaureate degree. Counsel submitted the minutes of a September 30, 1997 INS/AILA Adjudications Liaison Meeting at legacy INS headquarters. Counsel stated that INS Headquarters policy with regard to the education requirements listed in Part A of the ETA 750 was that the employer indicated the level of education required for the proffered position. Counsel emphasized that the minutes stated that the alien may meet the education requirements with a comparable foreign degree. Counsel stated that this statement confirmed that the petitioner was not required to describe in detail the various foreign educational documents or systems that equate to a U.S. bachelor's degree on the

ETA 750. According to counsel, by indicating “or foreign equivalent” on a labor certification, the petitioner was stating that it accepted an educational evaluation that showed the beneficiary possessed the academic “foreign equivalent” of a four-year U.S. bachelor’s degree. Counsel stated that in the instant petition, since the beneficiary possessed a comparable foreign degree to the U.S. Bachelor’s degree listed in ETA 750, Item 14, the beneficiary met the ETA 750 qualifications.

Counsel cited to 8 C.F.R. § 204.5(k)(2), and its definition of professions. Counsel states that the regulations for employment-based second preference category did not indicate that two foreign degrees (or other academic equivalency) could not be combined for a academic equivalency to a U.S. bachelor’s degree to meet the bachelor’s degree component of the EB-2 requirements of a bachelor’s degree plus five years of progressive experience.¹ Counsel submitted a letter of response, dated January 7, 2003, from [REDACTED] Trade Services, of legacy INS, and the letter to which [REDACTED] responded. Counsel also submitted minutes of an INS/AILA Adjudications Liaison Meeting at legacy INS headquarters on September 30, 1997.

On December 16, 2003, the director denied the petition. In his decision, the director determined that the petitioner had indicated on Form ETA 750 that it required the beneficiary to have completed four years of college education, to have a bachelor’s degree or its foreign equivalent in computer science, information systems, and/or business and to have four years of work experience. The director also noted that the petitioner did not indicate that any other level of education would satisfy this requirement nor did it provide for a degree equivalent as the minimum level of education, regardless of whether the equivalency was based upon work experience, training, or a combination of lesser degrees. While the director determined that the beneficiary had the requisite four years of work experience, he determined that the petitioner had not provided sufficient evidence that the beneficiary’s bachelor of commerce program was sufficiently intense in terms of number of lecture hours, to equate to a U.S. bachelor’s degree or that the beneficiary had completed the equivalent number of credit hours needed to complete a U.S. baccalaureate degree. The director referred to *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977) and stated that a three-year bachelor degree will not be considered to be the “foreign equivalent degree” to a U.S. baccalaureate degree. With regard to counsel’s assertion that the beneficiary had the foreign equivalent of a four-year U.S. bachelor degree through the completion of the three-year bachelor degree and the beneficiary’s two-year NIIT coursework, the director stated that the Form ETA-750 did not provide for a degree equivalent as the minimum level of education, based on work experience, training, or a combination of lesser degrees. The director stated that the minutes of the INS/AILA Adjudications Liaison meeting as in no way binding on CIS, and that the response contained in the letter from [REDACTED] specifically referred to foreign equivalent advanced degree rather than the phrase “United States baccalaureate degree or a foreign equivalent degree.” The director determined that the letter had little or no relevance to the instant petition.

In response, counsel refers to legacy INS Operating Instructions, Section 204.4, with regard to the submission of third or sixth preference petitions in a professional capacity by well-established organizations, colleges or universities of unquestioned good reputation. Counsel states that the petitioner is one of the premier telecommunications companies in the world and customarily hires and employs individuals similarly situated

¹ Counsel appears to be referring to the regulatory criteria for the educational equivalence of a master’s degree, which is a U.S. baccalaureate degree plus five years of progressive experience.

to the beneficiary. Counsel asserts that as outlined by the INS Operating Instructions, the filing of the immigrant petition in and of itself should have been considered as evidence that the beneficiary was qualified for the position. Counsel again asserts that the beneficiary has more than four years of qualifying education. Counsel identifies the beneficiary's university studies as his three-year degree program at the University of Mumbai, India from June 1994 to May 1997, and his studies at NIIT from March 1994 to October 1998.

Counsel states that CIS regulations and the Hernandez letter allow education gained through a combination of programs to equate to a four-year U.S. bachelor's degree. Counsel asserts that a longstanding CIS interpretation of bachelor's degree requirement listed on Form ETA 750 allows for any combination of education that is determined to be equivalent to a U.S. bachelor's degree to satisfy a bachelor's degree requirement on the Form ETA 750. Counsel states that the director's denial notice disregards this historical interpretation and misinterprets the January 7, 2003 letter from [REDACTED]. Counsel asserts that both the opinion request letter and the response from [REDACTED] focus on the interpretation of U.S. baccalaureate degree or a foreign equivalent degree generally, and not only as related to an advanced degree. Counsel further states that while *Matter of Shah* does state that a U.S. bachelor's degree normally required four years of study and that the completion of three years of study is not equivalent to a U.S. bachelor's degree, it does not discuss whether education gained through a combination of program from two institutions encompassing over four years of university-level education is equivalent to a U.S. bachelor's degree.

As correctly noted by the director, the January 7, 2003 letter from [REDACTED] Trade Services, does not purport to issue an opinion pertinent to the instant visa category, but only pertinent to a visa filed pursuant to 8 C.F.R. § 204.5(k)(2). The subject matter of the letter sent to [REDACTED] is clearly stated as the "interpretation of 204.5(k)(1) and (2) to allow foreign academic credentials as equivalent to a U.S. baccalaureate degree." The regulations at 8 C.F.R. § 204.5(k)(1) and (2) refer to professionals holding advanced degrees; [REDACTED] response just as clearly references I-140 petitions for members of the professions holding advanced degrees or aliens of exceptional ability. While both the letter of enquiry and the response lack clarity with regard to the questions asked and the answers received, the subject matter of both focuses on professionals with advanced degrees.² As such, the [REDACTED] letter is irrelevant to the instant visa category.

Regardless, letters and correspondence issued by the Office of Adjudications are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

The basis for distinguishing between a single degree and a combination of degrees in this context is that the Form ETA 750 requires a U.S. Bachelor's Degree or an equivalent foreign degree, and that the regulations

² The letter writer does not appear to have asked in his letter whether five years of progressive experience that would equate to a master's degree must be accrued in the United States or abroad; however, Mr. Hernandez answers this question.

governing the instant visa category do not permit the substitution of degrees and experience, or degrees and additional education, or a combination of degrees, for the requirements stated on the Form ETA 750.

CIS must ascertain whether the alien is, in fact, qualified for the certified job. 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.

Counsel is obliged to show that the beneficiary is qualified for the proffered position according to the terms of the Form ETA 750, without amending those terms to favor approval of the petition.

The petitioner is obliged, therefore, to demonstrate that the beneficiary has a U.S. bachelor's degree in computer science, information systems, and /or business, and four years of work experience. The petitioner has established that the beneficiary has the requisite four years of work experience. Because the record does not indicate that the beneficiary has a U.S. degree, the remaining issue is whether the beneficiary has a foreign degree that is equivalent.

The beneficiary's bachelor's degree from the University of Mumbai is in commerce, with a specialty in financial accounting and auditing. The diploma or evidence of a degree submitted adds the category of "special" in the description of the beneficiary's degree. His coursework included classes in business economics, and computer sciences. Based on such coursework, the beneficiary's degree of commerce could be included in the generic degree of business. Therefore, the beneficiary's three-year degree is in one of the mandated fields. However, it is a three-year degree, adjudged to be the equivalent of 3 years of study at a regionally accredited institution in the United States. Although both counsel and the education evaluator describe the beneficiary's three-year program as intense and involving the same number of credit hours as a U.S. baccalaureate degree, no further evidence or documentation is submitted to substantiate this assertion. There is no further explanation of the description of the beneficiary's degree as "special" on his diploma. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

A foreign three-year bachelor's degree is not a "foreign equivalent degree" to a United States bachelor's degree. A United States bachelor's degree generally requires four years of education. *Matter of Shah*, 17, I&N Dec. 244 (Reg. Comm. 1977). If supported by a proper credentials evaluation, a four-year bachelor's degree from India might reasonably be deemed to be the "foreign equivalent degree" to a United States bachelor's degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States bachelor's degree because the degree did not require four years of study. *Matter of Shah* at 245. Based on the same reasoning, the beneficiary's three-year degree from the University of Mumbai will not be considered the "foreign equivalent degree" to a United States bachelor's degree for purposes of this preference visa petition.

The beneficiary also studied systems management at NIIT. On appeal, counsel identifies the time frame for the beneficiary's NIIT studies and practical work experience as beginning in March 1994 and ending in

October 1998. The actual period of time appears to be from 1995 to October 1998.³ The educational evaluation declines to characterize the resultant NIIT degree as a bachelor's degree, but rather as the equivalent of at least two years of education at an accredited university in the United States. Nevertheless, the documentation submitted by the petitioner indicates that the beneficiary studied simultaneously, either full time or part time, at both the University of Mumbai and at NIIT from 1995 to 1997, and that the beneficiary participated in two semesters of practical work experience after he received his degree from the University of Mumbai in 1997. It is not clear from the evidence submitted how the evaluator reached his conclusion with regard to the NIIT credentials being the equivalent of two years of studies at a U.S. accredited college or university. Neither the petitioner nor the evaluator provides any further substantiation of this assertion. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*. As correctly noted by the director, because the beneficiary's course of study at NIIT was less than a four-year full-time course of study, the resultant degree cannot be considered the equivalent of a U.S. bachelor's degree. The petitioner has not demonstrated that the beneficiary has a U.S. bachelor's degree or an equivalent foreign degree and has not, therefore, demonstrated that the beneficiary is qualified for the proffered position according to the terms of the Form ETA 750 labor certification.

If the petition were viewed as a petition for a skilled worker pursuant to Section 203(b)(3)(A)(i) of the Act the same result would follow. In either event, the petitioner must demonstrate that the beneficiary is qualified for the proffered position pursuant to the requirements as stated on the Form ETA 750 labor petition. *See* 8 C.F.R. § 204.5(1)(3)(C) and 8 C.F.R. § 204.5(1)(3)(B).

The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has a United States baccalaureate or an equivalent foreign degree. The instant petition, submitted pursuant to 8 C.F.R. § 204.5(1), may not be approved.

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.

³ March 1994 is the date on the certificate for the beneficiary's higher secondary examination. The first transcript for NIIT, or Semester P, is dated May 9, 1995.