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

PUBLIC COPY

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[Redacted]

FILE:

[Redacted]

Office: NEBRASKA SERVICE CENTER

Date: **DEC 21 2005**

LIN 03 175 51956

IN RE:

Petitioner:
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:

[Redacted]

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 a management firm for private and public charter schools. It seeks to employ the beneficiary as a corporate financial controller. 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 possessed 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 September 26, 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 corporate financial controller. In the instant case, along with five years of experience in the job offered of corporate controller, item 14 reflects that an applicant must have a Bachelor's degree in accounting. Item 15 states that "prior experience in financial management of school systems required."

As evidence of the beneficiary's formal education, the petitioner initially submitted a copy of the beneficiary's diploma from the University of Madras in India showing that he was awarded a Bachelor of Arts degree in 1986. Along with a copy of his diploma, the record contains a copy of a "provisional certificate" and a "rank certificate" from the University of Madras reflecting that he passed the examination for this degree in 1985 with a main concentration in "corporate secretaryship." No grade transcripts accompany these documents verifying the length of the beneficiary's program, but the record also contains a credential evaluation report, dated April 30, 2001, from [REDACTED] Inc." The author of the evaluation is not indicated, but the summary of the beneficiary's studies at the University of Madras indicates that it represented a U.S. equivalency of three years of undergraduate study in liberal arts.

The petitioner also submitted copies of the beneficiary's certificates from the Institute of Chartered Accountants of India, consisting of a copy of his Intermediate Examination Certificate indicating that he passed the intermediate examination in May 1987, a copy of the beneficiary's Final Examination Certificate statement that he passed the final examination in November 1988, a copy of the beneficiary's Certificate of Membership in the Institute of Chartered Accountants of India as an associate admitted on April 30, 1989,

and a Certificate of Membership issued to the beneficiary as a fellow of the Institute of Chartered Accountants of India, dated May 31, 1994. The evaluation of the World Education Services, Inc. states that the beneficiary's 1989 Certificate of Membership in the Institute of Chartered Accountants "in conjunction with the study previously completed" is the U.S. equivalency of a bachelor's degree in accounting.

The director requested additional evidence from the petitioner in support of the required bachelor's degree in accounting as set forth on the ETA 750A. The director advised the petitioner that the evidence must be in the form of an official record showing the dates of attendance, area of concentration of study, and date of degree, if any.

In response, the petitioner, through counsel, submitted a copy of an evaluation report, dated November 26, 2003, from [REDACTED] Associate Director of the "[REDACTED], Inc." Ms. [REDACTED] states that the beneficiary's Bachelor of Arts degree "represents three years of study in business studies at a regionally accredited institution in the United States." She also states that the beneficiary's 1989 Certificate of Membership issued by the Institute of Chartered Accountants of India is based on the beneficiary's previous education, as well as successful passage of the final examination, and professional experience in the field. She concludes that the beneficiary has the U. S. equivalent of a bachelor's degree in accounting (accounting and auditing).

The director denied the petition on March 11, 2004. The director found that the evidence submitted did not meet the requirements of the approved labor certification because the labor certification does not define any other degree equivalency or level of education other than a bachelor's degree in accounting. He concluded that the beneficiary's academic studies based on his Bachelor of Arts degree and membership in the Institute of Chartered Accountants of India did not meet the requirements of the terms of the labor certification.

On appeal, the petitioner, through counsel, asserts that the beneficiary's three-year bachelor of arts degree and his academic studies and passage of the applicable examinations required to attain membership in the Institute of Chartered Accountants of India fulfill the terms of the labor certification as they are the educational equivalent of a U.S. bachelor's degree in accounting.

Counsel's assertions in this regard are not persuasive. CIS is bound to follow the pertinent regulatory guidelines pursuant to 203(b)(3)(A)(ii) of the Act. CIS jurisdiction includes the authority to examine an alien's qualifications for preference status and to investigate the petition under section 204(b) of the INA, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary v. Coomey*, 662 F.2d 1 (1st Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-FengChang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree, even where a classification may not require a bachelor's degree.

In this case, the ETA 750 explicitly states that the proffered position requires a bachelor's degree, not a combination of experience, certificates or degrees, which could be considered the equivalent of a bachelor's degree in a particular field. This petitioner seeks classification of the beneficiary as a professional under 203(b)(3)(A)(ii) of the Act. 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. 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(1)(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.

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 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. The beneficiary's Bachelor of Arts degree representing a three-year course of study is not an equivalent to a U.S. baccalaureate degree, generally requires a four-year course of study. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). The labor certification and regulation cited above clearly require an applicant for the position of a corporate financial controller to have a U.S. bachelor's or a foreign equivalent degree in accounting.

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 combined multiple 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).

In view of the above, the two evaluations combining the beneficiary's studies at the University of Madras and his Certificates of Membership in the Institute of Chartered Accountants cannot be considered probative of the beneficiary's credentials as required by the terms of the labor certification. The AAO finds that passage of the professional examination as demonstrated by the Certificate of Membership in the Institute of Chartered Accountants of India in the record does not establish that the beneficiary has earned any additional degree or degrees from a college or university. Nothing in the record suggests that either the Institute of Chartered Accountants of India is a college or university that awards degrees in specific areas of concentration. Neither the certificates nor the educational evaluation state that the beneficiary has earned any academic degree aside from the 1986 bachelor's degree. 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). 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.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.