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U.S. Department of Homeland Security  
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Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

*BC*



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **JAN 26 2005**  
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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:  
[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*  
for 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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a restaurant management company. It seeks to employ the beneficiary permanently in the United States as a tax accountant. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the beneficiary did not meet the experience required by the labor certification.

On appeal, counsel submits a brief and additional evidence.

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 the granting of 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.

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 hold baccalaureate degrees and 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. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is March 31, 2000.

The approved alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements for applicants. In the instant case, item 14 describes the "college degree required" as a "Bachelor's Degree." The major field of study must be accounting, finance, business administration, or public administration.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submits a copy of the beneficiary's Bachelor of Arts (Three-Year Degree Course), dated November 30, 1976, a copy of a transcript for a Pre-University Examination showing the beneficiary's marks, a copy of a transcript for Part I of the B.A. Examination showing the beneficiary's marks, a copy of a transcript for Part II of the B.A. Examination showing the beneficiary's marks, a copy of a transcript for Part III of the B.A. Examination showing the beneficiary's marks, and an academic merit certificate, dated March 3, 1975, stating that the beneficiary distinguished himself by standing in Public Administration in the University Examination 1974.

A July 17, 1996 evaluation from Josef Silny & Associates, Inc. was also submitted in support of the petition. This evaluation states:

Based upon my professional experience (see attached resume), I conclude that through the combination of formal education and work experience Mr. [REDACTED] has achieved the equivalent of a U.S. Bachelor degree in business administration with concentration in accounting.

A second evaluation states:

In summary, it is the judgment of Josef Silny & Associates, Inc., International Education Consultants, that Mr. [REDACTED] has the equivalent of completion of three years of undergraduate study in Economics, Public Administration and related courses at a regionally accredited institution of higher education in the United States.

The director denied the petition, concluding that the beneficiary's educational credentials are not an acceptable equivalency for a United States baccalaureate degree.

On appeal, counsel argues that the beneficiary does possess the equivalent to a U.S. Bachelor's Degree. Counsel submits another credentials evaluation from the Foundation for International Services, Inc. The evaluation from the Foundation for International Services, Inc. states:

1. Copy of the certificate from Panjab University in Chandigarh, India certifying that [REDACTED] passed the Pre-University Examination (Humanities Group) held in April of 1973 in the Third Division and listing the subjects examined, including the marks for each. This document which was dated July 6, 1973 was signed by the Registrar and is equivalent to graduation from high school in the United States. A copy of a Matriculation Examination certificate equivalent to completion of grade 11 was also submitted.
2. Copy of the diploma from Panjab University in Chandigarh, India certifying that Prem Lal passed the examination held in September of 1976 in the Third Division and obtained the degree of Bachelor of Arts (Three-Year Degree Course). This document which was dated November 30, 1976 was signed by the Registrar, the Vice-Chancellor and the Chancellor and is equivalent to three years of university-level credit from an accredited college or university in the United States. . . .
3. Copy of the First, Second, and Third Semester Examination Result Cards from Panjab University in Chandigarh, India certifying that [REDACTED] passed the First Semester Examination held in December of 1978 in the Subject of Public Administration, and passed some subjects in the Second and Third Semester Examinations held in May and December of 1979 and listing the courses completed, including the marks for each. These documents which were [dated] September 26, 1979, March 30, 1979, and November 29, 1980 were signed by the Registrar and, in conjunction with paragraph #2, are equivalent to a bachelor's degree in public administration from an accredited college or university in the United States. . . .
4. Copies of certificates from the Imperial Institute of Accountancy (IIA), Vishav Gurmat Roothani Mission Charitable Trust Regd., Thakur Computer Centre and Mukesh Vishesh Associates which are equivalent to professional training from a private organization in

the United States. A copy of an Affidavit verifying that [REDACTED] changed his name to [REDACTED] was also submitted.

5. In summary, it is the judgment of the Foundation that [REDACTED] (aka [REDACTED]) has the equivalent of graduation from high school in the United States and a bachelor's degree in public administration from an accredited college or university in the United States.

The regulations define a third preference category professional as 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." See 8 C.F.R. § 204.5(l)(2). The regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies for the classification of a professional that:

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

The above regulations use a singular description of 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 Form ETA 750 requires a bachelor degree and four (4) years of education. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245. (Comm. 1977). Therefore, the combination of education and experience, a combination of degrees, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree may not be accepted in lieu of a four-year degree.

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. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(C), to qualify as a professional, the petitioner must submit evidence showing 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. In this case, the bachelor's degree must be in accounting, finance, economics, business administration, or public administration.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's 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.

**ORDER:** The appeal is dismissed.