

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

PUBLIC COPY



U.S. Citizenship
and Immigration
Services



B6

FILE: [Redacted] Office: NEBRASKA SERVICE CENTER
LIN 03 052 52546

Date:

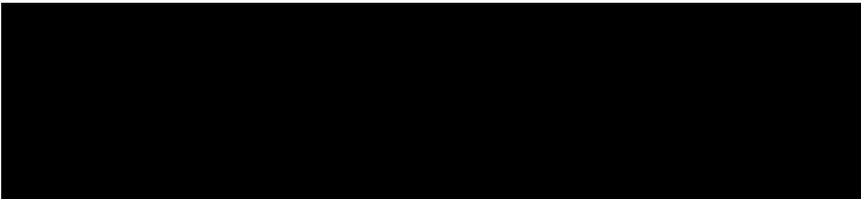
JAN 26 2005

JAN 26 20

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

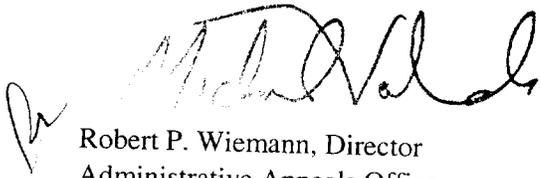
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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(l)(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(l)(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(l), 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 13, 2001. The Form ETA 750 states that the proffered position requires a “B.S. for (sic) Foreign Equivalent” in “Computer Science, Computer Info. Sys., Engineering or related field.”

With the petition, counsel submitted the report, dated March 21, 2001, of an educational evaluation service. That report states that, in April 1993, the beneficiary received a three-year Bachelor of Science degree in science from the College of Science of Kurukshetra University in India. The report states that the bachelor’s

degree is the equivalent of three years of college level study in a Bachelor of Science program at a regionally accredited institution in the United States.

The report also states that the beneficiary completed a three-year part-time course in Systems Management at National Institute of Information Technology (NIIT) Secunderabad, India, from 1994 to 1997. The report stated that the beneficiary's studies at those two institutions, taken together, are equivalent to a Bachelor of Science degree in computer information systems at a regionally accredited institution in the United States.

Counsel submitted a copy of a transcript from NIIT. That transcript shows that the beneficiary took six classes at that institution. The credit recommendations on that diploma accord the beneficiary the equivalent of 49 semester hours of credit.

The director determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree, and, on March 17, 2003, denied the petition.

On appeal, counsel submits a letter, dated January 7, 2003, from the Director, Business and Trade Services, of the INS, which is now the CIS. That letter states that the language of 8 C.F.R. § 204.5(k)(2), "a foreign equivalent degree," is not meant to preclude a beneficiary with several degrees.

In his brief counsel argues that, "This opinion is directly on point and is clear as to the issue of whether the Beneficiary's combination of degrees satisfies the requirement of a "foreign equivalent" of a U.S. BS degree."

Further, counsel states that CIS is obliged to have a rational basis for distinguishing between a single degree and a combination of degrees. Counsel characterizes that distinction as "hypertechnical and counterintuitive."

The January 7, 2003 letter from the Director, Business and 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). As such, it is irrelevant to the instant visa category.

Furthermore, 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 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. 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); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Notwithstanding his characterization of the distinction, 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, Computer Info. Sys., Engineering or related field, or a foreign degree which is the equivalent of such a U.S. bachelor's degree. 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 College of Science of Kurukshetra University does not appear to be in any one of the mandated fields. Further, 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.

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 Kurukshetra University 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. The educational evaluation declines to characterize the resultant degree, if any, as a bachelor's degree. Further, the beneficiary took a three-year part-time course of study at NIIT. Because that course of study 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.

Further, this office notes that the only evidence in the record to demonstrate that the beneficiary has the claimed three-year degree from Kurukshetra University is the statement of the educational evaluator that he reviewed the beneficiary's Kurukshetra University transcripts and diploma in forming his opinion pertinent to the beneficiary's education. That transcript and that diploma are not in the record.

The regulation at 8 C.F.R. § 204.5(1)(3)(C) states that "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." The statement of the evaluator that he reviewed the beneficiary's transcripts and diploma is insufficient.

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.