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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: NOV 10 2005
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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 (AAO) on appeal. The appeal will be sustained. The petition will be granted.

The petitioner is an information technology firm. It seeks to employ the beneficiary permanently in the United States as a computer programmer/analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The beneficiary, who signed the Form ETA 750B on May 20, 2003, claimed on it he has been working for the petitioner since May 2003.

The director determined that the petitioner had met the experience requirements set forth on the ETA 750 but not its educational requirements, and denied the petition accordingly.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act) provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals. The section provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is June 2, 2003.

The Form ETA 750 states that the position of programmer/analyst requires a four-year bachelor's degree in computer science or engineering or its foreign equivalent degree, two years of experience in the offered position or in the related occupation of software engineer, software developer IT manager or software consultant.

The I-140 petition was submitted on October 21, 2003. On the petition, the petitioner claimed to have been established on 1997, to currently have 70 employees, to have a gross annual income of \$7 million, but left blank the box asking for the petitioner's net annual income.

In support of the petition, the petitioner submitted:

- Counsel's G-28;
- The original certified labor certification application;
- The Trustforte Corporation's April 28, 2003 evaluation of the beneficiary's credentials,¹
- The beneficiary's diplomas and grade transcripts supporting the granting of the diplomas; and,
- Two former employers for whom the beneficiary had worked from December 13, 1995, to May 5, 2000, and from July 2001 to December 2002 respectively, describing the beneficiary's work for each.

In a request for evidence (RFE) dated December 10, 2003, the director requested proof the beneficiary had completed a four-year bachelor's degree in computer science or computer engineering as of the priority date. The director specifically requested an official transcript with dates of attendance, majors and degree date.

¹The credentials consist of a Bachelor of Science diploma from the University of Madras (1989-1992); a post-graduate diploma in computer applications from Loyola Institute of Business Administration (1993-1994); and a post-graduate diploma in Business Administration from the Loyola Institute of Business Administration (1996-2000).

In response, on February 18, 2004, the petitioner submitted:

- An evaluation by forensic education consultant [REDACTED] dated January 25, 2004, concluding the beneficiary's credentials were "the equivalent in level, scope and intent of a Master Of Business Administration with a major academic field of study in Computer Science and Management Information Systems Degree at a regionally accredited university in the United States."

On May 19, 2004, the director determined the ETA required a four-year bachelor's degree "or its foreign equivalent degree" in computer science or computer engineering whereas the beneficiary's was a three-year Bachelor of Science degree in physics and a post-graduate diploma in computer applications. The director denied the petition, stating:

Form ETA 750 does not indicate that any other level of education will satisfy the requirement, nor does it provide for a degree equivalent as the minimum level of education when that equivalency is based upon work experience, training or a combination of letter degrees. Further, a three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

On appeal, counsel submits a brief with no additional evidence.

Counsel states the director has erred in finding that the beneficiary only had "a combination of lesser degrees," but that, based upon the January 25, 2004 evaluation, had "a foreign equivalent degree above [sic] that of a baccalaureate which should qualify him."

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(1)(2). The regulation at 8 C.F.R. § 204.5(1)(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 regulation uses a singular description of foreign equivalent degree. The regulation's plain meaning requires the foreign equivalent of a U.S. baccalaureate degree to be a single foreign degree. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Thus, the instant Form ETA 750 requires a bachelor degree and four (4) years of education "or its foreign equivalent degree."

To determine whether a beneficiary is eligible for a third preference immigrant visa, Citizenship and Immigration Services (CIS), must ascertain whether the alien is, in fact, qualified for the certified job. 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. Here, the wording of the regulations and the ETA 750 contemplate acceptance of "a foreign equivalent degree" as sufficient. 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).

The issue is whether the beneficiary met all of the requirements stated by the petitioner in block 14 of the labor certification as of the day it was filed with the Department of Labor.

Counsel specifically disagrees with the director's interpretation of "foreign equivalent degree" to require only a single bachelor's degree to the exclusion of a combination of multiple degrees as the equivalent of a U.S. bachelor's degree. Counsel refers to an unspecified advisory opinion letter in which CIS director of Business and Trade Services, ██████████ had rejected the interpretation of 8 C.F.R. § 205.4(k)(2) as requiring one and only one foreign degree as "a foreign equivalent degree."

Counsel also cites a letter², from ██████████ of the INS Office of Adjudications to a lawyer interpreting when a beneficiary's credentials suffice as "a foreign equivalent degree" to a U.S. advanced degree under 8 C.F.R. § 204.5(k)(2). Within the letter, ██████████ states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree, for purposes of petitions filed under §203(b)(2) of the Act. The AAO notes that 8 C.F.R. § 204.5(k)(2) specifies the educational requirements of preference visas filed under §203(b)(2) of the Act, on behalf of aliens with advanced degrees or of exceptional ability.

In regard to ██████████ letter, it is noted that 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).

In this case, the Form ETA 750 requires a bachelor's degree in Computer Science or Computer Engineering or a "foreign equivalent degree," and four years of college education. It is noted that the regulation at 8 C.F.R. § 204.5(l)(2) uses the singular article "a" before "foreign equivalent degree." Therefore, a plain-language reading means that only a single degree can be a foreign equivalent degree of a U.S. baccalaureate degree. Nevertheless, this may be inapposite because, in the words of ██████████ the beneficiary's credentials are those, "in level, scope and intent of a Master of Business Administration with a major academic field of study in Computer Science and Management Information Systems in this intensive graduate program." That is, according to counsel, the beneficiary's educational credentials are more advanced than the ETA 750 requires.

The record of proceeding includes the following information:

- According to Trustforte, the beneficiary completed advanced coursework in physics in 1992 for a Bachelor of Science Degree from the University of Madras. From 1993 through 1994, the beneficiary

² The ██████████ letter was dated January 7, 2003.

completed bachelor's level studies in Computer Applications and Physics at Loyola.³ In 1996, the beneficiary enrolled in a graduate-level program in Business Administration and Information Systems at Loyola, based upon his prior degree and completion of the bachelor's levels studies at Loyola.⁴

- The transcript for the Loyola coursework, 1996–2000, included statistics, accounting, economics, personnel management, finance, marketing research, research methodology, project planning, business ethics, among others, for which the beneficiary received an overall grade of A. The University of Madras grade transcript lists coursework in physics (including atomic and nuclear), mathematics, and chemistry, but does not list any courses in computers or software.
- The [REDACTED] evaluation included the final year project work, not included in the Trustforte report, that states that the International Handbook of Universities, 14th Ed., lists Loyola as an accredited "Jesuit College," established in 1925, with the Loyola coursework consisting of 42 semester hours in computer science and managing Information Systems. [REDACTED] states that the beneficiary "designed and developed a system titled Apollo Hospital Maintenance management System" during his last six months at Loyola.

From the foregoing, this office finds the beneficiary's post-graduate diploma is an academic rather than a postgraduate professional training program, and as such meets the requirements of the ETA 750 and the cited regulations. While the University of Madras degree alone would not qualify as a foreign equivalent degree, representing four years of college, the graduate-level diploma from Loyola does. Trustforte found the beneficiary matriculated to Loyola "based on the completion of bachelor's level studies and competitive entrance examinations. The AAO finds the beneficiary has the equivalent of at least a four-year's bachelor's degree in computer science to qualify for the proffered position based upon the educational qualifications set forth on the ETA 750.

We find that the submitted credential evaluations sufficient to determine that the beneficiary has a single foreign equivalent degree that is at least the equivalent of the required US bachelor's degree in computer science or engineering, inasmuch as entry into the master's program was "contingent upon the completion of the relevant undergraduate course of study." [REDACTED] noted this in his evaluation, stating that to matriculate into the graduate program at Loyola Institute of Business Administration, Loyola College, and the beneficiary had to have completed his undergraduate baccalaureate degree from the University of Madras, an accredited institution. Further, the coursework the beneficiary performed in the master's program was academic rather than mere professional training. He completed 42 semester hours of graduate-level coursework amounting to six semesters during the period 1996–2000. [REDACTED] describes the course of study at Loyola as an "intensive graduate program."

The petitioner has established that the beneficiary has the foreign equivalent degree of at least a four-year U.S. bachelor's degree in Computer Science or Computer Engineering as of June 2, 2003. Therefore, the petitioner has overcome this portion of the director's decision.

³ The Loyola College diploma for the beneficiary's lists System Analysis and Design, computer languages, programming, and Oracle software, and a grade transcript lists 80 credits and granting him a diploma with "distinction."

⁴ The graduate coursework at Loyola included marketing research, project planning, business policy, business administration, software packages, management information systems, leading in 2000 to a post-graduate diploma in business Administration, which Trustforte concluded was "the equivalent of a Master of Business Administration Degree with a concentration in Information Systems."