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U.S. Citizenship
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Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER
LIN 03 178 52871

Date: **OCT 26 2005**

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

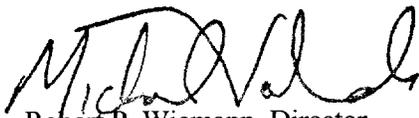
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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 company in business to provide book stores for universities. It seeks to employ the beneficiary permanently in the United States as a database administrator. 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 petition accordingly.

On appeal, counsel submits a brief.

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 October 29, 2002. The Form ETA 750 states that the proffered position requires the attainment of a bachelor's degree requiring four years of college in any field and two years experience in the job offered or in the related occupation of UNIX (AIX) administrator.

With the petition, counsel submitted copies of a work experience letter as an UNIX (AIX) administrator; a certificate from the State of Delaware: a credentials equivalency certificate for the beneficiary stating that the beneficiary has the equivalent of a bachelor's of science degree in chemistry based upon a three year course of instruction with the University of Bombay, India; a leaving certificate from the Thomas Baptista Junior

College, Papdy, India; a diploma from St. Augustine's High School; and, various completion certificates from courses taken by the beneficiary after graduating the University of Bombay.

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 December 12, 2003, denied the petition.

The issue to be discussed in this case is whether or not the petitioner has established that the beneficiary has the requisite education as stated on the labor certification. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The certified Alien Employment Certification in this matter stated that the position of database administrator required a four-year bachelor's degree from a college. In the instant case, Form ETA 750 A, item 14 describes the requirements of the proffered position and occupation as follows:

14.	Education (enter number of years)	Heading
	Grade School	Blank
	High School	Blank
	College	<u>4</u>
	College Degree Required	<u>Bachelor's</u>
	Major Field of Study	<u>in any field</u>
	Training	Heading
	No. Yrs. Mo.s	<u>0</u>
	Experience	Heading
	Job Offered	Heading
	Number –Years Mos.	2 0
	Related Occupation	UNIX (AIX) Administrator
	Number –Years Mos.	Or 2 0

The employer who is the petitioner has prepared the above ETA 750 A as an essential part of the labor certification process used to support a preference visa petition that is employment based. The employer who desires to employ an alien in the United States must undertake a multiple step process as directed by the United States Department of Labor which, once approved, certifies the Alien Employment Application for the occupation based upon the above mentioned criteria. In the present case, the above requirements also state that the occupation of database administrator requires the attainment of a bachelor's degree requiring four years of college or its equivalent, in any field, and two years experience. In a related occupation, UNIX (AIX) Administrator, the employer/petitioner will accept two years occupation experience instead of two years experience as a database administrator.

Along with Form ETA 750, Part A, set forth above, the employer also is required to submit Form ETA 750, Part B that is a "Statement of Qualifications of Alien." Part B identifies the alien, specifies his current and prospective address in the United States, his education including trade and vocation training, and lists his work experience.

The Form ETA 750 Part B prepared by the beneficiary states that the following education experience:

Block 11

Names and Addresses of Schools, Colleges, and Universities attended (including training or vocational training facilities)

* * *

University of Bombay (Mumbai) India

Field of Study	<u>Chemistry</u>
From ...[mo./yr]	<u>March 1988</u>
To ...[mo./yr.]	<u>April 1992¹</u>
Degrees or Certificates Received	<u>Bachelor's</u>

Aptech Computer Education, Mumbai, India

Field of Study	<u>Information & Systems Management</u>
From ...[mo./yr]	<u>Jan. 1993</u>
To ...[mo./yr.]	<u>July 1994</u>
Degrees or Certificates Received	<u>Higher Diploma</u>

On appeal, the counsel asserts that:

1. Nebraska Service Center's position that a Bachelor's Degree equivalence where one obtains a degree in 3 years is not supported by law or Precedent Decisions.
2. Nebraska Service Center has failed to perform the analysis required by Matter of Katigbak 14 I&N Dec 45, which it cites in its denial.
3. The Employment Category for which this petition has been filed² includes Skilled Workers³ and the NSC has not demonstrated why the beneficiary does not qualify under this section- the word "Professional OR Skilled [sic] Worker" requires that a denial incorporate a basis for denial under the alternative.
4. Conclusions regarding acceptance of multiple lesser degrees, etc. without a basis in law is not an acceptable basis for refusal to review such documents.

¹ Since the beneficiary attended the University of Bombay for only three years, the dates indicated conflict with his grades transcript.

² In the subject case, the petitioner "checked-off" on I-140, Part 2, "e" that states "A skilled worker (requiring at least two years of specialized training or experience) or professional"

³ The regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies for the classification of a skilled worker:

(B) *Skilled workers*. If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Throughout his brief, counsel asserts and attempts to explain the intent of the petitioner to, in essence, produce a petition with certified Alien Employment Application acceptable to Citizenship and Immigration Services (CIS). The assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). CIS must examine the documents submitted that are now in the record of proceedings and referenced in this discussion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The petitioner's intent is expressed in the certified Alien Employment Application. The attainment of a bachelor's degree requiring four years of college is required. Note that even if this petition were considered under the skilled worker regulations, the result would be the same. While it is clear that regulations governing the skilled worker classification do not contain a baccalaureate degree requirement, CIS is still bound by the regulations and above-cited case law to require the petitioner and beneficiary to meet the requirements specified on the ETA-750. See 8 C.F.R. § 204.5(l)(3)(ii)(B). Regardless of classification, the ETA-750 contains the requirements that the beneficiary must have four years of college education and a bachelor degree.

The subject Form ETA 750 Part A requires a bachelor degree from a college. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Counsel attempts to distinguish *Matter of Shah* and its holding from the present case. He asserts "One must first distinguish Shah as being relevant to a decision which would be based solely on a three year education Bachelor's Degree in Chemistry and no other education." In the present case, the beneficiary has a bachelor's degree received in three years at the University of Bombay, India and no other course study in college or university. The courses of study that Aptech Computer Education, Mumbai, India offered and the beneficiary undertook do not purport to be that obtained from a college or university or other accredited institution of higher education. Principally, Aptech is a technical training center offering courses in computer related languages, applications and systems. Therefore, the decision in *Matter of Shah* is directly relevant to our present case and its facts. Counsel further attempts to distinguish *Matter of Shah* on its particular facts. Counsel discusses that in *Matter of Shah* the three year college degree was identified as "Special", and, he asserts that the case out-come related to how the bachelor degree was characterized by its adjective word modifier "Special". This is not an issue in our case. The petitioner stated the degree should be a college degree, that is a "bachelor's" [degree].

Therefore, to be the equivalent to a U.S. bachelor's degree, the degree must require the successful completion of 4 years of college studies. The evaluation reports mention below and the grade transcripts submitted by the petitioner show that the beneficiary has attained a three-year college bachelor's degree from the University of Bombay (Mumbai) India. Thereafter, the beneficiary attained a non-college "higher diploma" from Aptech Computer Education, Mumbai, India in Information & Systems Management that neither evaluation service equates to a college or university education. A review of all the educational transcripts, diploma, "higher diploma" from Aptech Computer Education, and, other certificates and professional work experience does not, by either CIS or petitioner's own education evaluators review demonstrate that the beneficiary attained a four-year college degree.

The petitioner has submitted an education credential evaluation dated January 15, 2004 of the beneficiary's foreign schooling as it equates to a higher education offered in the United States. It states in pertinent part:

"It can therefore be concluded that ... [the beneficiary's] high school education is academically equivalent to one year of study at the university level."

The AAO is not persuaded by this statement of opinion. A high school education is a requirement for entrance into an educational degree program in a college or university, but a high school education is not academically equivalent to one year of study at a university or college. This opinion is in direct contradiction to the same evaluator's opinion recited below.

The same evaluator also provided an initial credential evaluation report dated April 25, 2003, which in states pertinent part:

[The beneficiary's] bachelor's degree is academically equivalent to a Bachelor of Science in Chemistry as awarded by an accredited U.S. university. Admission to this program required the equivalent to a U.S. high school diploma. Furthermore, he completed almost three years of postgraduate studies in computer information and systems management studies, which demonstrate that [the beneficiary] has more than four years of study towards a bachelor's degree.

The bachelor degree that the evaluator speaks of above is according to the record of preceding a three-year degree. The beneficiary attended the University of Bombay for only three years according to his grades transcript in evidence. As mentioned, the beneficiary attained "higher diploma" of technical training achievement from Aptech Computer Education, Mumbai, India in Information & Systems Management that neither evaluation service equates to a college or university education. Aptech Computer Education is not a college or university. See <http://www.aptech-education.com/>. It describes its educational services as:

The company [Aptech] addresses business opportunities in the retail training & education segment with a thrust on long-term career courses and the high-end short-term courses in Information Technology, Multimedia and Soft Skills Training. The Company also has a significant business in the Institutional segment where it offers Total Learning Solutions to Corporates [sic], Governments and Working professionals.

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, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this instance, by the petitioner's credential evaluator's opinion, the beneficiary has less than a four-year college degree. This matter is not in dispute.

Despite counsel's arguments, CIS will not accept a degree equivalency when a labor certification plainly and expressly requires a specific degree, a four-year college degree. To do so would be a material change to the petition and it would also be contradicted by a plain reading of the subject labor certification. A petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

As noted above it was petitioner's own job requirement that a bachelor degree be the minimum occupation requirement for database administrator. Counsel has referred to sections of the regulations implementing the Act one of which states the requirement controlling in this matter by defining a professional as one who holds " ... at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professionals."⁴

⁴ 8 C.F.R. § 204.5(1)(2).

The requirement that the occupation requires a four-year bachelor degree is the petitioner's job requirements as found in the certified Alien Employment Application. Counsel asserts that if CIS would follow the intention of the petitioner to seek classification for a Skilled Worker category the beneficiary would be qualified under that category. Counsel is seeking, in the alternative, approval of the petition asserting that the beneficiary as the qualifications of a skilled worker requiring at least two years training or experience, not of a temporary nature, for which qualified workers are not available in the United States. In this instance, the certified Alien Employment Application was approved for the occupation of database administrator requiring a four-year college degree in any field. To achieve that certification, and to demonstrate that there was a labor shortage of database administrators in the United States, the employer advertised the position with a minimum requirement of a four-year college degree. Individuals without a four-year college degree were by the terms of the advertisement, which restated the terms of the Alien Employment Certification, not qualified. Although there is no "foreign equivalency" language in the Act or in regulation for the skilled worker classification, the certified Alien Employment Application's requirements of a four-year college degree must be followed by CIS. The beneficiary's degree has not been shown to be the equivalent of a four-year college degree according to *Matter of Shah* or the weight of the evidence presented in this matter.

To determine whether a beneficiary is eligible for a third preference immigrant visa, 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 *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983).

However, under either skilled worker or professional category, the occupation according to the certified Alien Employment Application still requires a degree that the beneficiary does not possess.

Counsel introduces two letters prepared as advisory guidance by CIS personnel for other immigration matters involving immigration visa regulations for another visa classification, that is "... Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability."⁵ Differing preference categories have different requirements under the regulations. Here, we follow the regulations first above recited that control our adjudications of the subject preference category. Also, the facts of each case are unique and differing facts will effect the adjudication for each case. The contents of the letters submitted are not relevant to our case at hand. 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 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(l), 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.

⁵ 8 C.F.R. § 204.5(k)(2).



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ORDER: The appeal is dismissed.