

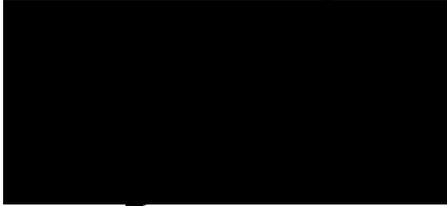
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U.S. Department of Homeland Security
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U.S. Citizenship
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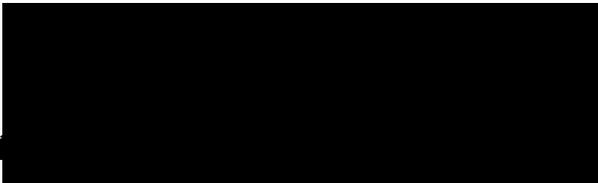
FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN 02 245 52190

Date: **SEP 16 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 Director, Nebraska Service Center, denied the preference visa petition. The Administrative Appeals Office (AAO) dismissed a subsequent appeal, affirming the director's decision. The matter is now before the AAO on a motion to reconsider.¹ The motion will be granted and sustained. The previous decisions of the director and AAO will be withdrawn. The petition will be approved.

The petitioner is a software consulting firm. It seeks classification of the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3), and it seeks to employ the beneficiary permanently in the United States as a software marketing engineer. The director determined that the petitioner had not established that the beneficiary has the bachelor's degree that the Form ETA 750 states is a prerequisite of the proffered position, and denied the petition accordingly. The AAO affirmed that decision, dismissing the appeal.

In support of the motion, counsel submits a brief.

The regulation at 8 C.F.R. § 103.5(a)(3) states:

Requirements for motion to reconsider. A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

The instant motion qualifies as a motion to reconsider because counsel urges that the decision of denial was incorrect based on the evidence of record at the time of that decision.

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 or seasonal nature, for which qualified workers are unavailable 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.

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:

¹ Although counsel headed the brief “Motion to Reopen,” he alleged no new facts and provided no new evidence. The motion, therefore, does not qualify as a motion to reopen pursuant to 8 C.F.R. § 103.5(a)(2), and is treated herein as a motion to reconsider.

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(I), 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 December 10, 2001. The Form ETA 750 states that the proffered position requires four years of college and a bachelor's degree. The Form ETA 750 specifies that the bachelor's degree must be in one of the following majors: computer science, computer applications, business administration, MIS, engineering, or its foreign educational equivalent. Finally, the Form ETA 750 states that the proffered position requires two years of experience in the job offered or two years experience in the related field of Business Development Manager, and must include at least two years of experience marketing ERP applications.

With the petition, counsel submitted a diploma and transcripts from the University of Bombay stating that the beneficiary was awarded a three-year bachelor of Commerce in April 1993. Further, counsel submitted a diploma and transcripts from the K.J. Somaiya Institute of Management Studies and Research, showing that during April of 1997 the beneficiary was awarded a two-year degree in management studies.

Finally, counsel submitted the report, dated August 9, 2001, of an educational evaluator. That report states that the beneficiary's undergraduate education at the University of Bombay, together with his graduate studies in business administration at the K.J. Somaiya Institute, are analogous to a bachelor's degree in business administration earned at an accredited U.S. institution.

Because the evidence submitted was insufficient to demonstrate that the beneficiary has a four-year bachelor's degree, the Nebraska Service Center, on October 23, 2002, requested additional evidence pertinent to the beneficiary's education. The Service Center noted that the petitioner must prove that the beneficiary has a U.S. bachelor's degree or the foreign equivalent.

In response, counsel submitted copies of the evidence previously submitted and a cover letter, dated January 13, 2003. In that cover letter counsel noted that the beneficiary has passed the three-year course of study leading to a bachelor's degree in commerce from the University of Delhi and two-year course of study leading to a postgraduate degree in business administration from K.J. Somaiya Institute. Counsel emphasizes that the report of the educational evaluator states that those two degrees, taken together, are equivalent to a U.S. bachelor's degree in business administration.

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 7, 2003, denied the petition.

On appeal, counsel asserted that the beneficiary has fulfilled the educational requirement of the proffered position and that he was providing additional evidence in support of that proposition.

Counsel provided the report of another educational evaluator, an assistant professor in the Frank G. Zarb School of Business of Hofstra University. That report, dated March 28, 2003, states that the beneficiary's two-year postgraduate degree from K.J. Somaiya Institute, in itself, is at least equivalent to a U.S. bachelor's degree in business administration. In support of that assertion, the evaluator states,

Further, I note that the completion of the Postgraduate Diploma program in Business Administration at the K.J. Somaiya Institute of Management Studies and Research would be the basis for admission to graduate programs in Business Administration in the United States. If [the beneficiary] were to apply for admission to Hofstra University, I am certain that his credentials would be viewed as having satisfied bachelor's-level requirements in Business Administration. Indeed, [the beneficiary] could be admitted as a transfer student directly into the graduate Business programs of the Frank G. Zarb School of Business of Hofstra University.

On January 27, 2004, the AAO found that neither of the beneficiary's foreign degrees is the equivalent of a U.S. bachelor's degree and affirmed the director's decision, dismissing the appeal.

In the motion, counsel argues that the beneficiary's foreign education is the equivalent of at least a U.S. bachelor's degree. In support of that assertion counsel submits copies of previously submitted evidence. Counsel notes that the second educational evaluation submitted indicates that the beneficiary's graduate degree, in itself, is equivalent to a U.S. bachelor's degree in business administration.

Counsel further cites *Matter of Rajagopalamenon*, 13 I&N Dec. 286 (R.C. 1969), for the proposition that the beneficiary's masters degree is at least the equivalent of a U.S. bachelor's degree.

The case at 13 I&N Dec. 286 (R.C. 1969) is not *Matter of Rajagopalamenon*, but *Matter of Retino*. *Matter of Rajagopalamenon* is located at 13 I&N Dec. 110 (D.D. 1968). Although both of those cases relate to educational requirements in the context of immigrant petitions, neither is directly on point. Counsel has not made clear which case he intended to cite. Under these circumstances, this office will not engage in further analysis of the two cases.

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 degree from India might reasonably be deemed to be the "foreign equivalent" of a United States bachelor's degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year 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. As was enunciated in the decision on appeal, this office declines to find that the beneficiary's three-year bachelor's degree is the equivalent of a four-year U.S. bachelor's degree.

A prerequisite of the beneficiary's two-year postgraduate degree from K.J. Somaiya Institute, however, is an undergraduate degree of at least three years. The March 28, 2003 educational evaluation states that the beneficiary's two-year postgraduate degree from K.J. Somaiya Institute is at least equivalent to a U.S. bachelor's degree in business administration. Under these circumstances, this office is persuaded by that

evaluation and finds that the petitioner's degree from the K.J. Somaiya Institute, in itself, is at least equivalent to a U.S. bachelor's degree in business administration.

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 met that burden.

ORDER: The motion is granted and sustained. The AAO's decision of January 27, 2004 is withdrawn. The petition is approved.