

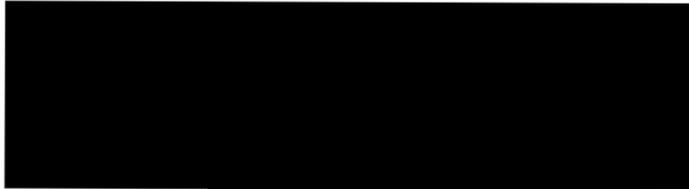
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**U.S. Citizenship  
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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **MAR 24 2006**  
LIN-03-270-52886

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:  
[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, 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 telecommunications software development company. It seeks to employ the beneficiary permanently in the United States as a systems analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he determined that the beneficiary did not present evidence that he had the foreign equivalent of a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification and submits 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 the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.<sup>1</sup>

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

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. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

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. 8 C.F.R. § 204.5(d). See *Matter of Wing's Tea House*, 16 I & N Dec. 158 (Act. Reg. Comm. 1977). In this case, that date is January 8, 2002.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of systems analyst. In the instant case, item 14 describes the requirements of the proffered position as follows:

14. Education
  - Grade School
  - High School
  - College
  - College Degree Required                      Bachelor's

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<sup>1</sup> In an accompanying brief with appeal, counsel specifically states that the petition was filed under Section 203(b)(3)(A)(ii) of the Act as the third preference immigrant visa category to seek classification as a professional by virtue of his academic education and Bachelor's degree.

Major Field of Study

Computer Science, Mathematics, Accounting,  
Engineering or a related discipline

The applicant must also have two (2) years of experience in the job offered or in the related occupation of programmer/analyst. Additionally, Item 15 requires as the "Other Special Requirements" as follows: "Must have experience with PowerBuilder, SQL & Oracle. Must be willing to temporarily relocate to client sites throughout the U.S."

The beneficiary set forth his credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), he indicated that he attended the National Institute of Information Technology (NIIT) in India in the field of "Computer Science" from 1991 through 1993, culminating in the receipt of a "Diploma"; and that he attended the University of Bombay in India in the field of study "Bachelor's" from 1988 through 1991. He provides no further information concerning his educational background on this form, which is signed by the beneficiary under a declaration under penalty of perjury that the information was true and correct. In corroboration of the Form ETA-750B, the petitioner provided copies of the beneficiary's "Certificate of Bachelor of Commerce" issued by the University of Bombay on March 4, 1992 and transcripts from that university, and "Honours Diploma in Systems Management" issued by NIIT on July 15, 1993 with associated transcripts.

A credential evaluation drafted by the  
with the petition and stated the following:

(WEE) was also initially submitted

[The beneficiary] has a Diploma from the University of Bombay, India, which attests that he successfully completed the required program of study and was awarded the degree, Bachelor of Commerce in Accounting, on 04 March 1992, after passing the final examinations held in April 1991.

The University of Bombay was founded in 1857 and has a current enrollment of over 255,000 students. It is officially recognized (accredited) and accepted in India and in the United States.

Admission to this study requires the completion of education equivalent to the U.S. high school diploma.

This is a three year (six semester) program of study transferable toward a four year Bachelor's degree in Business Administration and Accounting from a regionally accredited university in the United States.

[The Beneficiary] has a Transcript and a Diploma from the National Institute of Information Technology, India, which attest that he successfully completed the three semester program of study in Computer Science and was awarded the Honours diploma in Systems Management on 15 July 1993.

[NIIT] is accredited at the technical college level by the All India Council for Technical Education.

This is a program of study which entails one and one-half years (three semesters) of study in Computer Science and, when taken with the degree cited above, this represents the completion of an undergraduate major in Computer Science from an accredited college of technology in the United States.

In summary, it is the judgment of [WEE] that [the beneficiary's] three year university degree from India and the three semesters of study in Computer Science from NIIT are equivalent to the

degree, Bachelor of Business Administration in Accounting with an additional major in Computer Science, from an accredited college or university in the United States.

Because the evidence was insufficient, the director requested additional evidence on March 30, 2004, specifically requesting evidence establishing that the beneficiary has obtained the required bachelor's degree in one of the specified fields before January 8, 2002 and stating that "[e]vidence of education must be in the form of an official record showing the dates of attendance, area of concentration of study, and date of degree award, if any."

In response to the director's request for evidence, the petitioner submitted a letter from WEE as an addendum to its credential evaluation. The addendum states that "[a] technical college/college of technology in a WEE, Inc. evaluation is referring to technical, accredited post-secondary study at the college level, in fields such as Engineering Technology, Computer Technology, Information Technology, etc. This study can transfer to other accredited college or university in the United States. The National Institute of Information Technology is an example of such an educational institute from India."

The director denied the petition on September 9, 2004, finding that the beneficiary's three-year bachelor's degree cannot be considered to be the "foreign equivalent degree" to a United States baccalaureate degree, and that combination of the beneficiary's two lesser degrees cannot meet the requirement set forth on Form ETA 750 because the ETA 750 does not state that any other level of education will satisfy the petitioner's requirement, nor does it provide for a degree equivalent as the minimum level of education, regardless of whether the equivalent is based on work experience, training, or a combination of lesser degrees.

On appeal, counsel asserts that regulations and memorandum allow combination of lesser degrees and per the evaluation from WEE the beneficiary's combination of three-year degree and three semester diploma are sufficient to meet the "foreign equivalent degree" requirement of 8 C.F.R. § 204.5(l)(3)(ii)(C).

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 record indicates that the beneficiary does not hold a U.S. bachelor's degree or a foreign equivalent degree. The beneficiary held a bachelor's degree from the University of Bombay in India on March 4, 1992. The credentials evaluation states that this degree is the equivalent to three years undergraduate study in an accredited U.S. college or university. A U.S. bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's degree from the University of Bombay cannot be considered a foreign equivalent degree.

The beneficiary also holds a diploma from NIIT in India issued on July 15, 1993 upon completion of a three semesters program in systems management. However, the record does not demonstrate that the diploma from NIIT in India is a single academic degree that is a foreign equivalent degree to a U.S. bachelor's degree. The regulations at 8 C.F.R. §§ 204.5(l)(3)(ii)(c) and (l)(2) set forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree. The combination of a degree deemed less than the equivalent to a U.S. baccalaureate degree and a diploma or certificate does not meet that requirement.

Further, the difference between a three-year bachelor's degree and an U.S. Bachelor's Degree is one year college study at the senior (the fourth year of college) level. The credentials evaluation does not conclude that courses the beneficiary took at the NIIT are at the U.S. equivalent college senior level in the field of computer science or information technology, nor does it state that admission to the NIIT requires the completion of at least two years of college education.

It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides:

[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.

For the reasons discussed above, the evaluation provided by the WEE cannot be given full weight in the instant case.

In this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. As noted above, a U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. at 244. In that case, the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a United States baccalaureate degree. *Id.* at 245. *Shah* applies regardless of whether or not the petition was filed as a skilled worker or professional.

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 uses 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.

Counsel also submits a copy of a letter dated January 7, 2003 from [REDACTED] of Director of Business and Trade Services of CIS to counsel in other cases, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2). Within the January 7, 2003 letter, Mr. [REDACTED] states that "[d]espite the use of the singular "degree," it is not the intent of the regulations that only a single foreign degree may satisfy the equivalency requirement. Provided that the proper credential evaluations service finds that the foreign degree or degrees are the equivalent of the required US degree, then the requirement may be met." This letter is a response to a letter regarding I-140 petitions for members of the professions holding an advanced degree and the question is whether the reference to "a foreign equivalent degree" in 8 C.F.R. § 204.5(k)(2) means that the foreign equivalent advanced degree must be in the form of a single degree. In this case, the petition is for professionals instead of members of the professions holding an advanced degree, and furthermore, the governing regulation is 8 C.F.R. § 204.5(l)(2) instead of 8 C.F.R. § 204.5(k)(2). Therefore, the memorandum cited by counsel is not applicable here in the instant case.

Furthermore, 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).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in Mr. [REDACTED] correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree for professionals. We do not find the determination of the credentials evaluation probative in this matter.

If supported by a proper credentials evaluation, a four-year baccalaureate degree from India could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, the record reflects that the beneficiary's formal education consists of less than a four-year curriculum. The evaluations submitted with the evidence in this proceeding suggesting that the beneficiary's certificates from various schools should be considered as the equivalent of a baccalaureate degree is not accepted as competent and probative evidence that the beneficiary holds a foreign equivalent degree to a United State's bachelor's degree because it includes multiple academic credentials in the evaluation.

Additionally, the petitioner has not indicated that a combination of educational achievements can be accepted as meeting the minimum educational requirements stated on the labor certification. Thus, the combination of educational achievements may not be accepted in lieu of one baccalaureate degree. The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

Based on the evidence submitted, the AAO concurs with the director that the petitioner has not established that the beneficiary possesses a 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 met that burden.

**ORDER:** The appeal is dismissed.