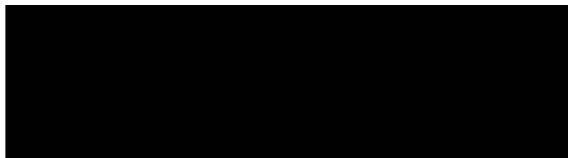


**identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy**



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



Bc

FILE:

LIN 04 079 52688

Office: NEBRASKA SERVICE CENTER

Date:

MAY 16 2006

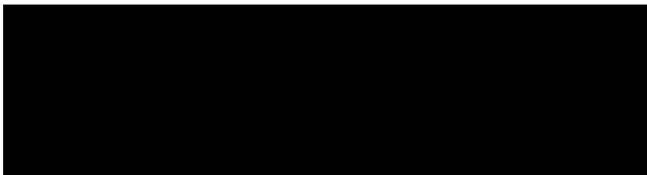
IN RE:

Petitioner:

Beneficiary:

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.

A handwritten signature in black ink, appearing to read "Michael Valdez".

Robert P. Wiemann, Chief
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 corporation. It seeks to employ the beneficiary permanently in the United States as a system analyst. 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 Alien Employment Certification accompanying the petition specified and denied the position accordingly.

On appeal, the counsel submits a brief.

Section 203(b)(3)(A)(i) of 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.

8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(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.

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.

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(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 7 2002. The petitioner selected in Part 2, box "e" of the I-140 petition. That selection states, "A professional (at a minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree) or a skilled worker (requiring at least two years of specialized training or experience)."

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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).

In the instant case, Form ETA 750 A, item 14 describes the requirements of the proffered position and occupation of system analyst as follows:

14.	Education (enter number of years)	
	Grade School	<u>8</u>
	High School	<u>4</u>
	College	<u>4</u>
	College Degree Required	<u>Bachelor's (or equivalent)</u>
	Major Field of Study	<u>Computer science, mathematics or any engineering field</u>
	Training	Blank
	Experience	
	Job Offered	
	Number -Years / Mos.	<u>*2/0 Exp may have been gained in the job described or any other job or jobs</u>
	Related Occupation	
	Number -Years / Mos.	<u>*2/0 Exp may have been gained in the job described or any other job or jobs</u>
	Related Occupation	
	Specify	<u>*"computer programmer" or "systems analyst" or any occupation with experience in item 15</u>

Form ETA 750 A, item 15 describes "Other special Requirements" as follows:

- *2 yrs exp in/with/using
- Window NT
- UNIX
- Oracle
- Visual basic

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 criteria. In the present case, the above requirements also state that the occupation of system analyst requires four years of resulting in a college Bachelor's degree (or equivalent) in the major field of study in computer science, mathematics or any engineering field.

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 the following education history:

Block 11

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

OSMANIA UNIVERSITY, Hyderabad, India

Field of Study	<u>computer science</u>
From ...[mo./yr]	<u>June [1990] 90</u>
To ...[mo./yr.]	<u>May [1993] 93</u>
Degrees or Certificates Received	<u>bachelor's</u>

The director issued a request for evidence dated March 22, 2004. The director requested evidence that the beneficiary completed four years of college education, and obtained the required bachelor's degree, or equivalent, in one of the specified fields (i.e. computer science, mathematics or any engineering field) before October 7, 2002.

The request for evidence stated that if the beneficiary possessed a degree received outside the United States, then in that case, the petitioner should also submit a credentials evaluation report of the beneficiary's educational attainment. It also requested substantiation of the beneficiary's "relevant industrial experience" as of the priority date.

Counsel submitted as evidence in response to the above an education credential evaluation by Education Evaluators International, Inc. dated February 3, 2000; a copy of the U.S. Department of Labor guidance on "Specific Vocational Preparation"; and an explanatory letter from counsel.

The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the Alien Employment Certification accompanying the petition specified, and denied the petition on October 5, 2004.

On appeal, the counsel asserts that the director erred by finding that the beneficiary has not earned the foreign equivalent to a U.S. bachelor's degree, that "a single foreign degree equivalency can take into account other further foreign education; that the director's reliance on *Matter of Shah*, 17 I&N Dec. 244 (reg. Comm.1977) is misplaced; and, a prior AAO decision that will be discussed below.

The subject Form ETA 750 Part A requires a degree from a college and the completion of four years of baccalaureate studies. CIS regulations do not provide that a combination of education and experience may be accepted in lieu of a four-year degree. While the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) do state that the “relevant post secondary education may be considered as training for the purposes of this paragraph;” there is no regulation that would allow for a converse, that the experience may be considered for education requirements. The record of proceeding demonstrates that the beneficiary has three years of college education and several additional diplomas and certificates issued by various nonacademic services.

Petitioner’s clear intent is expressed in the certified Alien Employment Application. A four-year college degree is required in computer science, mathematics or any engineering field of study. 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 culminating in a bachelor’s degree (or equivalent) in computer science, mathematics or any engineering field of study or it’s equivalency. The beneficiary does not meet this requirement.

An education credential evaluation by Education Evaluators International, Inc. dated February 3, 2000, stated that the beneficiary “... completed the three year full time program and earned the Bachelor of Science in Mathematics, Computer Science and Physics. “ The evaluation service also stated “[The beneficiary] ... earned the Honours Diploma in Information and Systems management from APTECH Computer Education¹ located in India. These studies are comparable to the completion of United States continuing education computer studies.”

In reference to the petitioner’s assertion that the beneficiary’s education is the equivalent to a bachelor’s degree secured from an institution of higher learning (a university or college) in the United States, petitioner submitted an education credential evaluation by Education Evaluators International, Inc. dated October 19, 2000, of the beneficiary’s foreign schooling as it equates to a higher education offered in the United States. The evaluation offered as a clarification of an earlier evaluation stated in pertinent part that in the United States or Canada “... the normal four year undergraduate program” has within it one year of general studies that “most foreign educational systems” allow to be met by the completion of a high school diploma. The evaluator goes on to state that an indication of the bachelor’s level acceptance (of what in the subject case would be a three year college curriculum) in India is the acceptance of a three-year college degree into an Indian graduate level program.

A credential evaluation report from The Trustforte Corporation submitted by petitioner dated October 28, 2004, stated in pertinent part:

¹ 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 credentials evaluation does not conclude that the applicant’s course of instruction that led to the honors diploma certificate to be the equivalent of any specific amount of time spent at a U.S. college or university. Therefore, the petitioner has not established that the beneficiary has the required number of years of college education.

{The beneficiary} ... completed a Bachelor of Science program at Osmania University and an Honors Diploma program in Information and Systems Management at Aptech Computer Education, both located in India. Based on the foregoing academics credentials, I find that ... [the beneficiary] attained a Bachelor of Science Degree in Computer Science from an accredited US college or university....

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 petitioner's credential evaluators, the beneficiary has less than a four-year college degree. This matter is not in dispute.

The above regulations at 8 C.F.R. § 204.5(l)(3)(ii)(C) use a singular description of foreign equivalent degree. Thus, for professionals, 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.

The petitioner also has provided a prior AAO decision in support of the above contentions. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. See the regulation at 8 C.F.R. § 103.9(a). The AAO reviews appeals on a de novo basis. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). Counsel's contentions have been discussed. Each case must be reviewed upon its own merits, and by definition, each case has its own particular fact situation that may result, and often does, in differing legal analysis and applicable of regulation.

Counsel also submits a copy of a letter dated January 7, 2003, from [REDACTED] of the INS Office of Adjudications 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 July 2003 letter [REDACTED] states that he believes that a foreign degree or degrees may be considered to be the equivalent of a U.S. bachelor's degree.

At the outset, 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. 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. We do not find the determination of the credentials evaluation probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). 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 because the degree did not require four years of study. *Matter of Shah*, at 245. While counsel argues that *Matter of Shah* is not controlling on the question of equivalent degrees, counsel also focuses on the fact that the case states that "usually" three year degrees are not the equivalent of four year degrees, and, counsel contends sometimes three year degrees can be

the equivalent of four year degrees.

The AAO finds that when the case of *Matter of Shah* states that a bachelor's degree "usually" requires four years of study, the exception to this rule is that it is possible to accumulate sufficient college credits in for example, college summer sessions, to complete a four year bachelor degree in less chronological time but with the same total credit hours as a four year bachelor's degree program requires in the United States. Regardless of *Matter of Shah*, however, the Application for Alien Employment Certification as submitted by the petitioner, and as certified by the U.S. Department of Labor renders this point moot since the subject certified Alien Employment Application contains the requirement that the alien applicant, or any American worker who applied for the position, complete four years of college education. If the petitioner had intended to accept applicants with less than four years of college, it could have submitted the Form ETA 750 requiring three years of college and/or some degree less than a United States' bachelor degree. If the AAO were to agree with the petitioner that the alien is qualified, then it would be approving an alien with lesser qualifications than that set forth on the Form ETA 750. Clearly, this would be contrary to the plain language of the labor certification. During recruitment, the petitioner was able to reject qualified United States workers who did not possess four years of college or a United States bachelor degree. Allowing the petitioner to circumvent the clear and unequivocal language stated in the Form ETA 750 Part A would frustrate the purpose of the Application for Alien Employment Certification.

The petitioner failed to submit evidence 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.

ORDER: The appeal is dismissed.