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U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: **OCT 06 2006**  
LIN-04-073-51620

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Center Director (Director), Nebraska Service Center. Now the matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software consulting firm. It seeks to employ the beneficiary permanently in the United States as a project engineer (senior business 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 petitioner did not demonstrate that the beneficiary possessed the requisite U.S. Bachelor degree or its foreign degree equivalent, therefore, he was ineligible for classification as an E32 professional under Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii).

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.<sup>1</sup>

Section 203(b)(3)(A)(i) of the Act 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 nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) also 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)(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. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977); 8 C.F.R. § 204.5(d). In this case, that date is September 26, 2002.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The AAO will first evaluate the decision of the director, based on the evidence submitted prior to the director's decision. The evidence submitted for the first time on appeal will then be considered.

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

- |                         |   |
|-------------------------|---|
| 14. Education           |   |
| Grade School            | Y   |
| High School             | Y   |
| College                 | Y   |
| College Degree Required | Bachelor's Degree or equivalent                           |
| Major Field of Study    | Business Administration or Management-Information Science |

The applicant must also have three years of employment experience in the job offered or the related occupation of SAP consultant, programmer analyst, or consultant.

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 Andhra University in Waltair, India in the field of "Business Administration" from June 1985 through May 1988, culminating in the receipt of a "Bachelor's Degree"; attended ICWAI in Calcutta, India in the field of "MIS" from June 1991 through June 1994, culminating in the receipt of an "Associates", and also attended Kernel in Hyderabad, India in the field of "Software Programming" from April 1993 to March 1994, culminating in the receipt of a "Diploma." 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 a Degree of Bachelor of Commerce and transcripts from Andhra University, Certificate of Membership as an Associate of, and certificate for passing final examination and examination results from the Institute of Cost and Works Accountants of India, certificate for completing the course Post Graduate Diploma in Computer Application and transcripts from Kernel Institute of Software Training, and six experience letters from former employers.

A credential evaluation of education drafted by [REDACTED] of Cultural House, Inc.- Credentialing and Evaluation Services in New York was also initially submitted with the petition and stated the following in pertinent part:

Copies of a Certificate from Andhra University, INDIA, attesting to the Degree, Bachelor of Commerce, having passed the Final Examinations in May 1988. This is a 3-year program of

study that is equivalent to an Associate Degree in Business Administration Degree from an accredited college or university in the United States and an additional year applicable towards a baccalaureate program of study in Business Administration. ...

Copy of a Certificate from Kernel Institute of Software Training attesting to successful passing of a Post-Graduate Diploma course in Computer applications. This is a post-graduate one-year full-time course in computer applications equivalent to a one-year post-graduate full-time course in computer applications from an accredited institution of higher education in the U.S.

\* \* \* \* \*

In leading Schools of Business in the United States such as the Leonard Stern School of Business of New York University, students with an Associate of Business Administration Degree, and at least one year of computer science applications subjects are eligible to graduate with the Degree, Bachelor of Science in Computer Information Systems.

Based on the reputation of Andhra University, the number of hours of coursework, the nature of the coursework, the subject matter covered in the coursework, it is the judgment of the undersigned that he has, as a result of formal education, the equivalent of an individual with the following Degree: Bachelor of Science in Computer Information Systems.

The director denied the petition on February 26, 2005, finding that the evaluation provided indicates that the beneficiary possesses the equivalent of a U.S. bachelor degree in Computer Information Systems by virtue of the combination of his three year Bachelor of Commerce and one year post graduate diploma. The director determined that the petitioner has not established that the beneficiary possessed the requisite education requirements for the permanent position as certified by the Department of Labor.

On appeal, counsel asserts that the director failed to read the evaluation in full, as the beneficiary possesses multiple degrees from various institutions. Counsel submits an additional credential evaluation by [REDACTED] of The Trustforte Corporation to support his assertion.

The record indicates that the beneficiary does not hold a U.S. bachelor's degree or a foreign equivalent degree. The beneficiary holds a bachelor's degree of commerce from Andhra University in May 1988. The credential evaluation report evaluates this 3-year program of study as equivalent to an associate degree in business administration from an accredited college or university in the United States and an additional year applicable towards a baccalaureate program of study in business administration. On other words, the beneficiary's credentials from Andhra University were deemed equivalent to three years of undergraduate study at an accredited U.S. college or university. A bachelor 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 Andhra University in India cannot be considered a foreign equivalent degree to a bachelor's degree awarded from an accredited educational institution in the United States.

The beneficiary also holds a Post-Gradate Diploma in Computer Applications from Kernel Institute of Software Training in March 1994. The evaluator attests that this post-graduate one-year full-time course in

computer applications is equivalent to a one-year post-graduate full-time course in computer applications from an accredited institution of higher education in the U.S. However, the evaluation and the record of proceeding do not demonstrate that the diploma in computer applications from Kernel Institute of Software Training is a single academic degree that is a foreign equivalent degree to a U.S. bachelor's degree. The regulation at 8 C.F.R. § 204.5(1)(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. 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.

On appeal counsel asserts that there is another way for the petitioner demonstrates that the beneficiary possessed the equivalent of US bachelor's degree. Counsel submits a new credential evaluation. [REDACTED] of [REDACTED] summaries his finding as follows in pertinent part:

[The beneficiary] passed the Final Examination of the Institute and was awarded a Final Examination Certificate from the Institute on September 9, 1994. The completion of the final professional examination of the Institute of Cost and Works Accountants of India is recognized by the Association of Indian Universities as the equivalent of at least a bachelor's degree. Thus, the completion by [the beneficiary] of the Final Examination program of The Institute of Cost and Works Accountants of India is analogous to the attainment of a Bachelor of Science Degree in Accounting at an accredited US college or university.

Accordingly, based on the completion of the Final Examination program of the Institute of Cost and Works Accountants of India, it is the judgment of [REDACTED] that [the beneficiary] attained the equivalent of a Bachelor of Science Degree in Accounting from an accredited college or university in the United States.

As previously discussed, a bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. at 245. However, the record does not contain a bachelor's degree or transcripts from the Institute of Cost and Works Accountants of India for the beneficiary or any other evidence that the beneficiary studied at that institute for four years. Nor does the record demonstrate that the final examination program at the Institute of Cost and Works Accountants of India is a single academic degree that is a foreign equivalent degree to a U.S. bachelor's degree. Further, the evaluator does not provide any objective evidence to support his conclusion that the completion of the final examination program of the Institute of Cost and Works Accountants of India is equivalent to a bachelor of science degree in accounting at an accredited US college or university. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *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)). 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). Therefore, the beneficiary's final examination certificate from the Institute of Cost and Works Accountants of India cannot be considered a foreign equivalent degree.

The beneficiary in the instant case was required to have a four years bachelor's degree or equivalent in business administration or management information science 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.

The AAO concurs with the director's findings that the petitioner did not establish that the beneficiary possessed the requisite educational requirement for the proffered position prior to the priority date. Counsel's assertions on appeal cannot overcome the ground of denying the petition.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

**ORDER:** The appeal is dismissed.