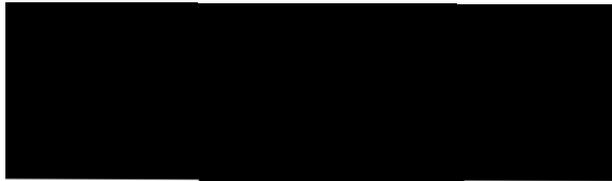




U.S. Citizenship
and Immigration
Services

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prevent clearly unwarranted
invasion of personal privacy



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FILE: [Redacted]
LIN 05 019 51997

Office: NEBRASKA SERVICE CENTER

Date: APR 02 2007

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:



PUBLIC COPY

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 Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a systems and business consulting firm. It seeks to employ the beneficiary permanently in the United States as a systems analyst. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary has the requisite education as required by the certified Alien Employment Application, specifically a Bachelor's of Computer Science degree attained after four years of college education.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's August 31, 2005 denial, an issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified based upon her education attainments. The director determined that the petitioner could not combine the beneficiary's completion of a three-year baccalaureate program from Osmania University, Hyderabad, India, majoring in mathematics, physics and chemistry, with a subsequent course of instruction in computer science from the Institute of Public Enterprise, Hyderabad, India, to demonstrate that the beneficiary has a foreign equivalent degree to a United States baccalaureate degree attained after four-years of college or university instruction.

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 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.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on August 18, 2003.¹ The proffered wage as stated on the Form ETA 750 is \$38.00 per hour (\$79,040.00 per year). The Form ETA 750 states that the position requires a four-year bachelor's degree in computer science and one year of experience in the job offered or one year of experience as a programmer analyst using software tools that are mentioned in Part 13 of Form ETA 750 A.

Counsel submitted copies of the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor; an academic evaluation prepared by the Trustforte Corporation, New York, New York dated January 25, 2000; a "Post-Graduate Diploma in Computer Systems" from the Institute of Public Enterprise, Hyderabad, India, dated September 16, 1989; a Bachelor of Science, from Osmania University, dated December 1989, majoring in the English language and another language, as well as mathematics, physics and chemistry; seven pages of memorandum of marks dated June 15, 1986; a letter from the petitioner dated September 9, 2003; and, a U.S. Internal Revenue Service Form 1120 tax return for 2003 as well as other documentation.

The director issued a request for evidence on May 4, 2005, consistent with the regulation 8 C.F.R. § 204.5(l)(3)(ii)(C). The director requested evidence that the beneficiary has a Bachelor's of Computer Science degree attained after four years of college education.

In response, as evidence, counsel submitted an explanatory letter dated June 2, 2005; an academic evaluation prepared by the Morningside Evaluations and Consulting Services dated May 16, 2005, along with a copy of regulations relating to H-1B nonimmigrant petitions.

The director denied the petition on August 31, 2005, finding that the evidence submitted did not establish that the beneficiary has the requisite education as required by the certified Alien Employment Application, specifically a Bachelor's of Computer Science degree attained after four years of college education.

In the appeal dated August 30, 2005, that was filed September 2, 2005, counsel requests that the director's decision be reversed. Counsel distinguishes the case precedent of *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977), and *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). Concerning the latter case cited, contrary to the director's decision, counsel asserts that the petitioner has met its burden of proof in this matter to demonstrate the beneficiary's qualifications.

The AAO takes a *de novo* look at issues raised in the denial of this petition. See *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal².

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

¹ It has been approximately four years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states "The wage offered equals or exceeds the prevailing wage and I [the employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work."

² 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).

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).³

In the instant case, 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 | <u>Blank</u> |
| High School | <u>Blank</u> |
| College | <u>4</u> |
| College Degree Required | <u>Bachelor's of</u> |
| Major Field of Study | <u>Computer Science</u> |

The applicant must also have one year of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision, or as a programmer analyst using software tools specified in Box 13 of the form ETA 750A. Item 15 of Form ETA 750A relating to other special requirements is blank.

The beneficiary set forth her credentials on Form ETA-750B and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. In Part 11, that elicits information about schools, colleges and universities attended, including trade or vocational training, the beneficiary represented that she received a post-graduate diploma in computer science from the Institute of Public Enterprise, Hyderabad, India, in October 1988 after one year of studies, and, a Bachelor's degree in mathematics, physics and chemistry from Osmania University, Hyderabad, India, received in less than three years in April 1987.

At the outset, it is noted that the combination of a post-graduate diploma and a three-year baccalaureate degree may not be considered to be the equivalent of a U.S. bachelor's degree. 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. In the instant case, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree with a major in Computer Science attained after four years of college education.

³ The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). CIS then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir.1983). *See also Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C.Cir.1977), "there is no doubt that the authority to make preference classification decisions rests with INS [now called CIS]. The language of section 204 cannot be read otherwise . . . all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority."

The petitioner delineated four years as the required number of years required for the bachelor's degree requirement on the Form ETA 750A. It is 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. Counsel distinguishes the *Shah* decision on its particular facts that are not replicated in the subject case, other than as here, the court found that a three year course of study does not arithmetically equal four years of university level studies.⁴

Petitioner's clear intent is expressed in the certified Alien Employment Application. It is important to iterate that it is not just CIS' requirements that are the issue in this case but that the petitioner required in the labor certification a four years bachelor's degree in computer science.

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.

The petitioner submitted an education credential evaluation prepared by the Trustforte Corporation, New York, New York dated January 25, 2000, of the beneficiary's foreign schooling as it equates to higher education offered in the United States. The evaluator stated in pertinent part that the beneficiary had completed three years of academic course work. This is incorrect. According to Form ETA 750 B prepared by the beneficiary, the beneficiary attended Osmania University, Hyderabad, India, for two years and ten months.

Further, the evaluator stated that the beneficiary's studies were entry-level general academic courses. The evaluator opines in the report that "most such courses would qualify as equivalent in US institutions" but does not explain what courses would be recognized. During the two year and ten month attendance at Osmania University, the evaluator stated that the beneficiary undertook courses in mathematics, physics and chemistry. A review of the transcript submitted in the record states 21 separate college level courses were taken by the beneficiary from English to Forestry Practical but no computer science courses of instruction were noted. Suffice it to say, according to the evaluator's opinion and the school transcript evidence submitted, the beneficiary had not taken any computer science courses of instruction from Osmania University that would prepare her to be a systems analyst.

The Trustforte Corporation evaluator then opines upon the beneficiary's education culminating in a post-graduate diploma in computer science from the Institute of Public Enterprise, Hyderabad, India, in October

⁴ Taking counsel's assertion on its face, to prevail, the petitioner would have had to advertise and recruit American workers other than as stated on the Alien Employment Application. That is to say, instead of advertising according to the terms of the labor certification for applicants having a bachelor's degree in computer science with a diploma evidencing four years of studies culminating in that degree, the petitioner would have had to depart from the terms of the labor certification. There is no evidence submitted that the petitioner advertised and recruited applicants other than as stated in the labor certification. It is also important to note, contrary to counsel's contention, that the labor certification's terms do not explicitly state any alternatives to a four year bachelor's degree such as a combination of degrees.

1988. We accessed the Institute of Public Enterprise, Hyderabad, India website on March 12, 2007 for information concerning this institute (i.e. <<http://home.ipeindia.org>>). The Institute of Public Enterprise, Hyderabad, India, is noted as a research center, not a university or college. The evaluator does not state that the Institute of Public Enterprise is an accredited institution of higher learning or that it is certified to offer university, college level or post graduate degrees in computer science. The Trustforte evaluator after stating that the beneficiary completed coursework in systems analysis and design, database management systems and computer applications, concludes that the beneficiary "satisfied substantially" requirements of not less than one year leading to a baccalaureate degree in Computer Science from an accredited institution of higher education in the United States. We have observed above, that this is the only relevant education the beneficiary had received in computer science. We find this opinion not credible. One year of instruction cannot equate to a baccalaureate degree in Computer Science from an accredited institution of higher education in the United States.

Further, the evaluator then combined the two dissimilar educational attainments, and, opined that in combination, they equate to a baccalaureate degree in Computer Science from an accredited institution of higher education in the United States. The evaluator presented no substantiation for this unsupported statement. We find this opinion is also not credible for lack of substantiation and quantification.

The petitioner submitted an education credential evaluation prepared [REDACTED] of Morningside Evaluations and Consulting Services dated May 16, 2005, of the beneficiary's foreign schooling as it equates to higher education offered in the United States. The evaluator stated that the beneficiary completed three years of coursework at Osmania University, Hyderabad, India, leading to a Bachelor of Science degree in 1987. This is incorrect. The beneficiary attended that university for two years and ten months.

The evaluator then briefly discussed the eight subjects in computer science that the beneficiary undertook at the Institute of Public Enterprise, Hyderabad, India, to receive a Post Graduate Diploma. Then, the evaluator combined these two educational attainments to conclude that the beneficiary has the foreign equivalent of baccalaureate degree in science from in Computer Information Systems from an accredited institution of higher education in the United States. The evaluator has not provided substantiation for this statement. We find this opinion is also not credible.

We also note that [REDACTED] stated that because of the positions he holds at Queens College of the City University of New York, he has the authority to evaluate whether the school is to grant college-level credit for experience, training, and/or courses at other U.S. or international universities. The credential evaluation submitted on appeal is rejected as incompetent evidence by the AAO. Correspondence from Queens College indicates [REDACTED] does not have the authority to grant academic credit for either the beneficiary's academic studies or for her work experiences. In December 2001, CIS received correspondence [REDACTED] Queens College. [REDACTED] letter stated that [REDACTED] did not have the authority to grant college-level credit for foreign university studies and then added:

The only college credit that may be given at Queens College for prior work experience and training is that determined to be its equivalent by the Adult Collegiate Education (ACE) Program after a very specific process of portfolio review. It is the ACE program, not an individual faculty member, which has the authority to grant credit.

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.”

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 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(3)(ii)(c), 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.