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U.S. Department of Homeland Security
20 Mass Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

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FILE: [Redacted]
LIN 04 037 53426

Office: NEBRASKA SERVICE CENTER

Date: FEB 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:



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 employment based immigrant visa petition was denied by Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a firm that offers services and consulting in software development, information technology, and engineering. It seeks to employ the beneficiary as a software engineer. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, counsel submits additional evidence and asserts that the beneficiary has the necessary educational credentials to meet the qualifications set forth in the approved labor certification.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

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* 8 C.F.R. 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 21, 2003.

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. The Application for Alien Employment Certification Form ETA-750A, item(s) 14 and 15 set forth the minimum education, training, and experience that an applicant must have for the position of a software engineer. In the instant case, item(s) 14 and 15 state the following:

- | | | |
|-----|----------------------------|---|
| 14. | Education | |
| | College | 4 |
| | College Degree Required | BS |
| | Major Field of Study | Science or Engineering or Technology or Electronics |
| | Experience | |
| | Job Offered | 1 yrs |
| | Related Occupation | 1 yrs. |
| | Related Occupation | Programmer Analyst or Software Engineer |
| 15. | Other Special Requirements | [None listed] |

As noted above, the ETA 750 specifies that an applicant for this position must have four years of college culminating in a U.S. Bachelor of Science or an equivalent foreign degree in science, engineering, technology, or electronics.

As proof of the beneficiary's formal education, the petitioner submitted a copy of the beneficiary's diploma from the University of Madras awarded on October 21, 1993, indicating that he obtained a Bachelor of

Science in Mathematics. A grade transcript accompanying this diploma reflects the beneficiary's marks obtained in 1991, 1992 and 1993. According to the ETA 750B, signed by the beneficiary on April 8, 2003, he attended this university from July 1990 to June 1993.

The petitioner also provided a copy of the beneficiary's diploma from Anna University in Madras, India, indicating that he was awarded a Bachelor of Technology in Electronics Engineering on September 16, 1996. The petitioner submitted a copy of the beneficiary's grade transcript supporting this degree. In the upper left corner of the transcript, the program to obtain a Bachelor's of Technology (B.Tech) is shown to require six semesters of study. The transcript reflects the beneficiary's marks for each of the six semesters attended beginning in July 1993 and ending in May 1996.

The petitioner also submitted an educational evaluation report from [REDACTED] of U.S. Evaluations, dated October 12, 2003. Mr. [REDACTED] determines that the beneficiary's Bachelor of Science degree represents the equivalent of three years of undergraduate studies at an accredited institution of higher learning in the United States. He then concludes that when the beneficiary's two degrees are combined they "equate to the attainment of a Bachelor of Science Degree in Electronic Engineering and Mathematics from an accredited institution of higher learning in the United States."

The petitioner provided two documents indicating that as of August 10, 2001, the beneficiary qualified as a "Siebel 2000 Certified Consultant." Other offered documents include a certificate of accomplishment from "Siebel University" reflecting that the beneficiary completed an eBusiness Application Integration course on December 19, 2000, certification of completion of a Siebel eBusiness Essentials course on October 27, 2000, and various employment verification letters, as well as a copy of the beneficiary's resume.

The director denied the petition on March 30, 2005. The director reviewed the educational evaluation and the records submitted. He stated that he did not disagree with the evaluation. However, he found that neither of the beneficiary's degrees represented a foreign bachelor's degree equivalent to a four-year U.S. baccalaureate. He concluded that the evidence did not meet the requirements of the approved labor certification because the beneficiary does not possess a four-year U.S. bachelor's degree or a single-source equivalent foreign bachelor's degree in the field(s) of study as set forth in the labor certification.

On appeal, counsel asserts that the director's decision stated that it "did not disagree" with the Resnick evaluation and therefore counsel argues that the director did not dispute the evaluation's conclusion.

However, if read together with the director's other observation that the evaluation did not find that either of the beneficiary's three-year degrees represented a single-source foreign bachelor's degree equivalent to a U.S. bachelor's degree, the basis of the director's denial is understandable.

Counsel submits on appeal a second academic evaluation dated April 19, 2005, from [REDACTED] of the Trustforte Corporation. In contrast to the Resnick evaluation, Mr. [REDACTED] determines that the beneficiary's 1996 bachelor's degree from Anna University is, by itself, a foreign equivalent degree to a U.S. Bachelor of Science Degree in Electronic Engineering.

Citing this academic evaluation, as well as website information indicating that a Bachelor of Technology awarded in India generally requires four years of study, counsel maintains that the beneficiary has met the requirements of the labor certification. Counsel also asserts that the record indicates that the beneficiary's

BTech degree from Anna University is based on a six year undergraduate program and that the beneficiary's credentials are similar to individuals in the United States who attain an associate degree from a community college and then study for another two years at another institution in order to obtain a baccalaureate degree. Counsel also maintains that the regulations supports the view that CIS recognizes foreign equivalent degrees.

Counsel's assertions are not persuasive. At the outset, it is noted that CIS has authority with regard to determining an alien's qualifications for preference status and the authority to investigate the petition under section 204(b) of the INA, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *Madany 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 v. Coomey*, 662 F.2d 1 (1st Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-FengChang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree, even where a classification may not require a bachelor's degree. In this case, the Form ETA 750 states that the proffered position requires a bachelor's degree, not a combination of experience, certificates or degrees, which could be considered the equivalent of a bachelor's degree. This labor certification does not specifically define an equivalency less than a bachelor's degree whether it is a U.S. awarded or foreign equivalent degree. 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 Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) also provides in pertinent part:

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

Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States bachelor's degree, CIS will recognize a single-source foreign equivalent bachelor's degree for the purpose of meeting the requirement for a baccalaureate. The above regulation uses the singular description of a foreign equivalent degree. Thus, the regulation 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. The regulation does not allow for a combination of degrees, certificates, diplomas or employment experience to qualify one as a professional for third preference visa category purposes. It is noted that while some of the regulatory history at (56 Fed. Reg. 60897-01, Nov. 29, 1991) discusses foreign equivalent "degrees," the plural reference is used as a grammatical designation rather than as part of a discussion directing CIS to

recognize specific combinations of foreign degrees in individual cases.¹

The publication of the final rule at 8 C.F.R. § 204.5 in 1991 specifically dismissed the option of equating "experience alone" to the required bachelor's degree for a professional under the third preference classification. We find that similar reasoning would also prohibit the acceptance of an equivalence in the form of multiple lesser degrees, professional training, or any other level of education deemed to be less than a "foreign equivalent degree" to a United States baccalaureate degree. Therefore, the beneficiary's combination of a three-year diploma from the University of Madras and a three-year diploma from Anna University and the other professional training do not establish that any of these institutions awarded the beneficiary a baccalaureate degree that is a foreign degree equivalent to a U.S. 4-year bachelor's degree.

We do not concur with counsel's assertion that the beneficiary's two three-year programs from two separate institutions are comparable to the acquisition of an associate's degree at a U.S. community college, that is subsequently recognized through the transfer of credit hours to a college or university culminating in a four-year baccalaureate degree. There is no indication in this record of proceedings that Anna University recognized the beneficiary's degree or credit hours received 1990-1993 from the University of Madras. Counsel's claim that a bachelor's degree in technology from an Indian college or university is generally a four year program even if true is not relevant to the instant case. The direct evidence relevant to the instant case contained in this record indicates that the beneficiary's Bachelor of Technology from Anna University represented a three year program of study, not a four year program or six year program. The labor certification and regulation cited above clearly require an applicant for the position of software engineer to have four years of college culminating in a U.S. bachelor's or a foreign equivalent degree in science, engineering, technology or electronics. A bachelor's degree is generally found to require 4 years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

The record does not contain an official college or university record showing that the beneficiary possesses a U.S. baccalaureate degree or a foreign degree equivalent to a U.S. bachelor's degree as of April 21, 2003, as required by 8 C.F.R. § 204.5(l)(3)(ii)(C). As noted above, the [REDACTED] and [REDACTED] evaluations are not consistent with each other as to which parts of the beneficiary's academic credentials constitute a foreign degree equivalent to a U.S. bachelor's degree. The evaluations of the beneficiary's academic record submitted into the record are not probative in determining whether the beneficiary has earned a *single* U.S. bachelor's degree or *single* foreign degree that is the equivalent of a baccalaureate degree program at an accredited university in the U.S. as required by 8 C.F.R. § 204.5(l)(3)(ii) (C). That is, 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, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). 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 in science, engineering, technology or electronics as required by the terms of the labor certification. Therefore, the beneficiary is not eligible for the visa

¹ For example, the discussion also refers to alien *members* of the professions that must have "advanced degrees or their equivalent" in order to obtain a second preference classification. (emphasis added)

classification sought.

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 sustained that burden.

ORDER: The appeal is dismissed.