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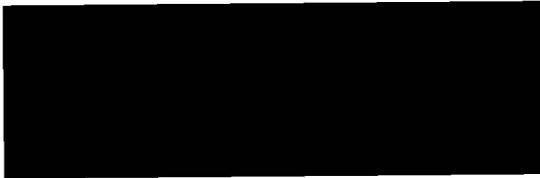
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U.S. Citizenship  
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FILE: LIN-06-015-52388 Office: NEBRASKA SERVICE CENTER Date: **JUL 28 2008**

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.

Robert P. Wiemann, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Acting Director (Director), Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be dismissed.

The petitioner is a university. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, a Form ETA 750,<sup>2</sup> Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a bachelor's degree as required on the Form ETA 750. The director denied the petition accordingly.

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 May 16, 2006 decision, the primary issue in the current petition is whether the beneficiary possessed the requisite bachelor's degree for the proffered position.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), 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) of the Act also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

On appeal counsel asserts that the beneficiary is a professional with a foreign degree equivalent to a U.S. bachelor's degree based on his bachelor of science degree from Bangalore University in India alone, and that the beneficiary may be considered to have the equivalent to a Bachelor of Science degree in Physics, Mathematics and Computer Science from a regionally accredited institution of higher education in the United States based on his professional employment pursuant to the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D).

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 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).

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<sup>1</sup> While the instant appeal is pending with the AAO, another petitioner filed an I-140 immigrant petition (SRC-07-800-27890) on behalf of the instant beneficiary on August 15, 2007. The beneficiary also concurrently filed his I-485 application for adjustment of status (LIN-08-004-55206) with that I-140 petition. Both the I-140 petition and the I-485 application are currently pending.

<sup>2</sup> After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

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 information systems technical consultant. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	8 [years]
	High School	4 [years]
	College	3+ [years]
	College Degree Required	B.A./B.S.
	Major Field of Study	<b>Computer Science</b>

The applicant must also have two years of experience in the job offered. The duties of the proffered position are delineated at Item 13 of the Form ETA 750A and need not be recited in this decision. Item 15 of Form ETA 750A states the following as other special requirements:

Experience must include proficiency with a variety of computing language including Sybase SQL-Anywhere, certification in Sybase PowerBuilder.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>3</sup> On appeal, counsel submits evaluations from Career Consulting International (CCI) and Marquess Educational Consultants (MEC). Other relevant evidence in the record includes the beneficiary's bachelor of science degree in physics, mathematics, computer science and transcripts from Bangalore University in India, certification of PowerBuilder Programmer from TekMetrics, Inc., Sun Certification as a Sun Certified Programmer for the JAVA 2 Platform from Sun Microsystems, Inc. and an evaluation from Foundation for International Services, Inc. (FIS). The record does not contain any further evidence concerning the beneficiary's educational qualifications.

The original Form ETA 750 was accepted on November 25, 2002 and certified on July 29, 2005. The ETA 750 in the instant case was filed and certified for the position of programmer analyst. DOL assigned the occupational code of 030.162-014, programmer analyst, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/crosswalk/DOT?s=030.162-014&g=Go> (accessed July 26, 2008) and its extensive description of the position and requirements for the position most analogous to programmer analyst position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to programmer analyst position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of

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<sup>3</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).

7-8 to the occupation, which means “[m]ost of these occupations require a four-year bachelor’s degree, but some do not.” See <http://online.onetcenter.org/link/summary/15-1051.00#JobZone> (accessed May 30, 2008). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

*See id.*

Therefore, a programmer analyst position could be properly analyzed as a professional or as a skilled worker since the normal occupational requirements do not always require a bachelor’s degree but a minimum of two to four years of work-related experience.<sup>4</sup> In this case, although the petitioner checked box e in Part 2 of the I-140 form, which is for either a professional or a skilled worker, the petitioner’s submission letter dated October 18, 2005 expressly indicated that the petition was filed “to classify [the beneficiary] as a Professional.” Further, the Form ETA 750 does not indicate that the employer would accept any alternate requirements in lieu of the bachelor’s degree requirement. Therefore, the AAO finds that the director properly analyzed this petition under the professional category.

For the professional category, 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 above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification 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 beneficiary possesses a three-year bachelor of science degree in physics, mathematics, and computer science from Bangalore University in India. In determining whether the beneficiary possessed a single U.S. bachelor’s degree or a foreign equivalent degree in computer science, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO, according to its website, <http://www.aacrao.org>, is “a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and

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<sup>4</sup> A professional occupation is statutorily defined at Section 101(a)(32) of the Act as including but not limited to “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” It is noted that programmer analyst positions are not included in this section.

registration professionals who represent approximately 2,500 institutions in more than 30 countries.” Its mission “is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” EDGE provides a great deal of information about the educational system in India. While it confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. A 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 three-year bachelor of science degree in physics, mathematics, and computer science from Bangalore University in India cannot be considered a foreign equivalent degree in computer science.

EDGE also discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor’s degree “represents attainment of a level of education comparable to a bachelor’s degree in the United States.” The “Advice to Author Notes,” however, provide:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor’s degree.

The beneficiary also holds certification of PowerBuilder Programmer from TekMetrics, Inc., and Sun Certification as a Sun Certified Programmer for the JAVA 2 Platform from Sun Microsystems, Inc. However, there is no evidence in the record of proceeding that the entrance requirement to the programs from which the beneficiary was issued the certifications is a three-year bachelor’s degree, and the programs provide college senior level education. Nor is there evidence showing that either TekMetrics, Inc. or Sun Microsystems, Inc. is an accredited university or institution approved by AICTE. Therefore, the beneficiary’s certifications from TekMetrics and Sun Microsystems cannot be considered as a postgraduate diploma from an accredited university or institution approved by AICTE. The record does not contain any evidence that any of the beneficiary’s certificates submitted in the record is a postgraduate diploma from an accredited university or institution approved by AICTE. Therefore, the petitioner failed to demonstrate that the beneficiary possessed a single U.S. bachelor’s degree or a foreign equivalent degree as required by the Form ETA 750 in the instant case.

The petitioner asserts that the beneficiary possessed the equivalent to a U.S. bachelor’s degree in computer science according to private credential evaluations from FIS, CCI and MEC. The evaluation report from FIS used the rule to equate three years of experience for one year of education, but that equivalence applies to **non-immigrant H-1B petitions, not to immigrant petitions. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).** The evaluation reports from CCI and MEC conclude that the beneficiary’s three-year bachelor’s degree alone is equivalent to a U.S. bachelor’s degree. However, as previously discussed, a three-year degree from India may

not be deemed a foreign equivalent degree to a U.S. baccalaureate since a bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). 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 record does not contain any evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree to be qualified as a professional for third preference visa category purposes. Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree” in computer science, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act. In addition, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), providing evidentiary requirements for “skilled workers,” states the following:

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.

(Emphasis added).

Thus, for petitioners seeking to qualify a beneficiary for the third preference “skilled worker” category, the petitioner must produce evidence that the beneficiary meets the “educational, training or experience, and any other requirements of the individual labor certification.” And for the “professional category,” the beneficiary must also show evidence of a “United States baccalaureate degree or a foreign equivalent degree.” Thus, regardless of the category sought, the beneficiary must have a four year bachelor’s degree or its foreign equivalent in Computer Science, and two years of work experience in the job offered. As the beneficiary lacks the degree required by the petitioner on the labor certification, the beneficiary cannot qualify under either the professional or the skilled worker category. Thus, the petitioner failed to demonstrate that the beneficiary is qualified for the proffered professional position, and counsel’s assertions on appeal cannot overcome the grounds of denial in the director’s May 16, 2006 decision. Therefore, the director’s ground for denying the petition under the professional category must be affirmed.

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.