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U.S. Citizenship and Immigration Services

BS

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 03 2004

IN RE: Petitioner: Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant 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 software consultancy and development company. It seeks to employ the beneficiary permanently in the United States as a software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as member of the professions holding an advanced degree. As required by statute, the petition was accompanied by certification from the Department of Labor. The director found the petitioner had failed to establish that the beneficiary meets the minimum requirement of a U.S. baccalaureate degree or its foreign equivalent. The director also determined that the petitioner had failed to establish that the beneficiary had at least five years of progressive post-baccalaureate experience in the specialty as of the priority date of the petition.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) states:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states:

> (i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:
>
> > (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
> >
> > (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

Counsel asserts that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree, and at least five years of progressive post-baccalaureate experience in the specialty. The director found that the evidence presented demonstrated only "four years and four months" of qualifying experience for the beneficiary as of the priority date. At issue is whether the petitioner has adequately demonstrated an additional eleven months of experience for the beneficiary through his employment at Silverline Industries from May 1997 to April 1998. Initially, the petitioner submitted two affidavits from the beneficiary's former coworkers at Silverline Industries, a job offer letter from Silverline Industries dated April 30, 1997, and a letter (dated February 20, 1998) from Silverline Industries confirming successful completion of the beneficiary's probationary employment period at that company.

On October 28, 2003, the director issued a request for evidence of employment experience in the form of a letter from the former employer "giving the name, address, and title of the employer and a description of the experience of the alien, including specific dates of the employment and specific duties." In response, the petitioner submitted copies of the beneficiary's pay stubs from Silverline Industries from May 1997 to March 1998 and an affidavit executed by the beneficiary explaining that he was "not able to get an experience letter from Silverline Industries."

On appeal, the petitioner presents an employment letter from Dilip Londhe, Senior Vice President, Silverline Industries, verifying that the beneficiary worked there as a programmer analyst from May 1997 to April 1998. Also submitted was a letter from the beneficiary's former supervisor at Silverline Industries describing the beneficiary's employment experience and specific duties at the company. We find that the evidence presented, particularly the additional letters provided on appeal, is adequate to demonstrate an additional eleven months of qualifying work experience as of the petition's priority date. Therefore, the petitioner has overcome the director's finding that the evidence presented did not establish that the beneficiary had at least five years of progressive post-baccalaureate experience in the specialty.

The remaining issue to be determined in this matter is whether the beneficiary holds "a United States baccalaureate degree or a foreign equivalent degree."

The requirement of a "foreign equivalent degree" at 8 C.F.R. § 204.5(k) indicates that the alien must possess a single degree (rather than a combination of degrees or experience) that is, standing alone, equivalent to a U.S. baccalaureate.

The petition was accompanied by an educational evaluation dated February 25, 1998 from stating:

> Enrollment in is based on graduation from high school and competitive entrance examinations; the University is an accredited institution of higher education in India. [The beneficiary] entered the University in 1991. He completed his studies in 1994 and was awarded a Diploma, having completed the required coursework and having passed the examinations required of candidates for the degree of Bachelor of Science [three-year degree]. The diploma is evidence that he completed his course of studies at the University.

> [The beneficiary] completed both the general studies and specialized studies which lead to a diploma from the University.... The nature of the courses and the credit hours involved indicate that he satisfied substantially similar requirements to the completion of three years of academic studies leading to a baccalaureate degree from an accredited institution of higher education in the United States.
>
> Thereafter, [the beneficiary] enrolled in the Diploma Program in Information and Systems Management of the in He received his diploma from the Institute in 1995. The nature of the courses and the credit hours involved indicate that he satisfied substantially similar requirements to the completion of not less than one year of academic studies leading to a baccalaureate degree in Computer Science from an accredited institution of higher education in the United States.
>
> Based on the reputations of and the the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, it is the judgment of The hat [the beneficiary] attained the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States.

The above credentials evaluation concludes that the beneficiary has the equivalent of a United States baccalaureate degree in Computer Science based on a combination of two lesser degrees. By combining the beneficiary's three-year bachelor of science degree with his , the evaluator from concluded that the beneficiary's educational qualifications are "the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States." The regulation at 8 C.F.R. § 204.5(k)(3)(i), however, requires that the alien must possess a single degree (rather than a combination of lesser degrees) that is the equivalent of a U.S. baccalaureate degree. Citizenship and Immigration Services (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); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

A three-year bachelor's degree will not be considered to be the "foreign equivalent degree" to a United States baccalaureate degree. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). According to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. After 12 years of primary and upper primary school, a bachelor's degree in the arts, commerce, or the sciences may be earned after three years of higher education. A bachelor's degree in a professional field of study, such as agriculture, dentistry, engineering, pharmacy, technology, and veterinary science, generally requires four years of education. *See generally* Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework - Degree Structure,* (last updated October 1, 2001), *available at http://www.education.nic.in/htmlweb/higedu.htm* (printed copy incorporated into the record of proceeding). If supported by a proper credentials evaluation, a four-year baccalaureate degree from India could reasonably be deemed to be the "foreign equivalent degree" to a United States baccalaureate degree. However, in *Matter of Shah*, 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. Based on the same reasoning, the beneficiary's three-year Bachelor of Science degree from the Osmania University will not be considered the "foreign equivalent degree" to a United States baccalaureate degree for purposes of this preference visa petition.

On October 28, 2003, the director issued a notice requesting evidence establishing that the beneficiary had met the requirements of 8 C.F.R. § 204.5(k)(3)(i)(B). The director stated:

> The petitioner has provided evidence indicating that the beneficiary has earned a three-year bachelor's degree, majoring in computer science and engineering, which is not a United States baccalaureate degree or a foreign equivalent degree. The beneficiary's post-graduate diploma and credentials evaluation are noted; however, neither the statute nor the regulations provide [for U.S. bachelor's degree] equivalency...based on work experience or a combination of educational certifications.

The petitioner's response included copies of two letters (dated January 7, 2003 and July 23, 2003) from Mr. Director of the Business and Trade Services Branch of Citizenship and Immigration Services' Office of Adjudications (now the Office of Program and Regulatory Development). The January 7, 2003 Office of Adjudications letter discusses whether a "foreign equivalent degree" must be in the form of a single degree or whether the beneficiary may satisfy the requirement with multiple degrees. Considering the credentials evaluation from and the two letters from , counsel asserts that the beneficiary has a "foreign equivalent degree" to a United States baccalaureate degree.

The January 7, 2003 Office of Adjudications letter was written in response to a letter from an attorney who inquired whether, for purposes of 8 C.F.R. § 204.5(k)(2), a "foreign equivalent degree" is limited to a "foreign degree" or whether "foreign education" may count, "when no formal degree is conferred or a 3 year foreign degree combined with a diploma that is determined to be equivalent to a United States degree." In response, stated:

> You ask whether the reference to "a foreign equivalent degree" in 8 C.F.R. § 204.5(k)(2) means that the *foreign equivalent advanced degree* must be in the form of a single degree. Despite the use of the singular "degree," it is not the intent of the regulations that only a single foreign degree may satisfy the equivalency requirement. Provided that the proper credential evaluations service finds that the foreign degree or degrees are the equivalent of the required U.S. degree, then the requirement may be met.

(Emphasis added.)

The director's decision directly addressed the January 7, 2003 Office of Adjudications letter, stating:

> [T]he letter from the Office of Adjudications is not persuasive. The succinct response of Mr. pecifically refers to "the foreign equivalent advanced degree" as the point of concern, rather than the phrase "United States baccalaureate degree or a foreign equivalent degree." Accordingly, the response appears to specifically address the phrase "foreign equivalent degree" as it relates to the definition of advanced degree at 8 C.F.R. § 204.5(k)(2): "'Advanced degree' means any

> United States academic or professional degree or a foreign equivalent degree above the baccalaureate level." esponse is reasonable when considered in the context of a "foreign equivalent degree" to a United States advanced degree; by definition, an advanced degree is a degree above the baccalaureate level, thereby requiring multiple degrees.

The July 23, 2003 letter from (now of the Office of Program and Regulatory Development) was written in response to another attorney seeking clarification of his January 7, 2003 letter. stated:

> This letter is in response to your June 30th letter inquiring about 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).
>
> You ask if the completion of a three-year university course of study resulting in a bachelor's degree, followed by the completion of a PONSI-recognized[1] post-graduate diploma program may be deemed to be the equivalent of a four-year U.S. bachelor's degree. In my opinion such a combination may be deemed the equivalent of a four-year U.S. bachelor's degree.
>
> I also agree with your second question – an alien in this scenario may combine that equivalent degree with five years of progressive experience in the specialty in order to satisfy the "advanced degree" requirements of INA § 203(b)(2)(A) and 8 C.F.R. § 204.5(k)(2).

In the present case, beyond the fact that there is no documentation in the record demonstrating that the beneficiary's diploma from in India is "PONSI-recognized," we find that the "opinion" offered by would lead to results directly contrary to the statute, regulations, standing precedent, and the intent of Congress.

Nothing in the legislative history suggests that an alien may qualify under 203(b)(2)(A) of the Act with anything less than a full bachelor's degree. In examining the legislative history, we note that in the Conference Report to the Immigration Act of 1990, the conferees stated:

> The conferees intend that the equivalent of an advanced degree be defined to mean a bachelor's degree plus at least five years' experience in the particular profession. In considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the professions.

H.R. Conf. Rpt. 101-955 at 121 (Oct. 26, 1990).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor's degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the

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[1] Program on Noncollegiate Sponsored Instruction of the American Council on Education's Center for Adult Learning and Educational Credentials.

Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree:

> The Act states that, in order to qualify under the second classification, alien members of the professions must hold "advanced degrees or their equivalent." As the legislative history...indicates, the equivalent of an advanced degree is "a bachelor's degree with at least five years progressive experience in the professions." Because neither the Act nor its legislative history indicates that bachelor's or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*

56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. Although the preamble to the publication of the final rule specifically dismissed the option of equating "experience alone" to the required bachelor's degree, the same reasoning applies to accepting an equivalence in the form of multiple lesser degrees, professional training, incomplete education without the award of a formal degree, or any other level of education deemed to be less than the "foreign equivalent degree" to a United States baccalaureate degree. Whether the equivalency of a bachelor's degree is based on work experience alone or on a combination of multiple lesser degrees, the analysis results in the "equivalent" of a bachelor's degree rather than a "foreign equivalent degree." In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. As noted in the Federal Register, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to bachelor's degree will qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience.

On appeal, counsel argues that the director "erred in finding that the Office of Adjudication letter is not binding on the Service." Recent letters issued by the Director of Business and Trade Services are not binding on CIS Officers, nor do such letters supersede the plain wording of the existing regulations. Letters written by individuals from the Office of Adjudications or the Office of Program and Regulatory Development do not constitute official CIS policy, and will not be considered as such in the adjudication of petitions or applications. Although such letters may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. *See* Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000)(copy incorporated into the record of proceeding).

Counsel further argues that the director's reliance upon *Matter of Caron International*, *supra*, and *Matter of Sea, supra*, is "totally erroneous" and "misquotes" the holdings in these standing precedents. Counsel is under the incorrect assumption that the director cited findings from these cases in direct response to the two letters from the Director of Business and Trade Services. Counsel appears to have misread the director's

decision. It is apparent that the director was referring to the educational evaluation from Barry Silberzweig of Trustforte Corporation rather than the two letters from Mr. Hernandez.

In sum, there is no statute, regulation or standing precedent that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. As previously noted, because the beneficiary does not possess a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree, it has not been established that he qualifies as a professional holding an advanced degree under section 203(b)(2) of the Act.

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.