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U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

B6

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: DEC 08 2004

IN RE: Petitioner: [redacted]
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:

[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 Michael Valdez

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a computer technology company. It seeks to employ the beneficiary permanently in the United States as a systems 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 determined that the Beneficiary's qualifications were not sufficient to meet the specific educational requirements on the labor certification accompanying the petition.

Section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153 (b)(2)9A), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

Regulations at 8 C.F.R. § 204.5(1)(3)(ii) specify for the classification of a professional that:

> (C) *Professionals*. 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 showing that the minimum of a baccalaureate degree is required for entry into the occupation.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See* 8 C.F.R. § 204.5(d). *See* also *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this instance, it is November 7, 2001.

The Form ETA 750, Item 14, indicated that the position of programmer analyst required a bachelor's degree in Computer Science or a related field and 1 years experience as a programmer or analyst.

The regulations define a third preference category professional as a "qualified alien who holds at least a United States baccalaureate degree or foreign equivalent degree and who is a member of the professions." *See* 8 C.F.R. § 204.5(1)(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 beneficiary indicates on Form 750 Part B that he has a bachelor's degree in commerce from Nagarjuna University, Andhra Praddesh, India, and a PGD (post graduate diploma) in Computer Applications from Datapro Information Technology, Bangalore India. The record indicates that the beneficiary's diploma in computer science and engineering is a three-year degree.

The petitioner initially submitted evidence of the beneficiary's evaluated credentials in the form of a copy of his bachelor's diploma and a copy of his transcript from Nagarjuna University and certificates of completion from Pro Information Technology indicating that the beneficiary had completed four computer programming courses from 1991 to 1993. The petitioner also submitted an evaluation of the beneficiary's credentials by , consultant with Global Education Group, asserts that the beneficiary's three year degree from Nagarjula University is the equivalent of three years of undergraduate study in Business Administration at an accredited university in the United further asserts that the beneficiary's Certificates from Datapro Information Technology represents the equivalent of one year of post-secondary study in computers at a vocational institution in the United States.

In addition, the petitioner submitted a 2002 Form W-2 Wage and Tax Statement from the petitioner to the beneficiary indicating that the beneficiary earned $67,599.75 during 2002. The petitioner also submitted its 2001 Form 1120 U.S. Corporation Income Tax Return. The 2001 tax return reflects a net income of $107,133. The petitioner also submitted its Form 941 Employer's Quarterly Federal Tax Returns for the first three quarters of 2002.

With the initial petition, counsel submitted insufficient evidence of the petitioner's ability to pay the proffered wage. In a request for evidence (RFE), dated August 14, 2003 the director required evidence that the beneficiary holds a 4 year degree in one of the fields specified on the supporting Form ETA-750. The director further determined that a bachelor's degree from India is equivalent of three years undergraduate study in business administration.

In response to the RFE, counsel submitted a letter dated July 23, 2003, from the Director, Business and Trade Services, CIS, which stated that the completion of a PONSI recognized postgraduate diploma should be deemed the equivalent of a United States Four year degree. Counsel submitted transcripts of the beneficiary's coursework at Osmania University. Counsel also submitted an evaluation of the beneficiary's credentials by Binyamin Resnick, President of U.S. Evaluations, who asserts that in addition to the beneficiary's three year degree from Nagarjula University and his one year post graduate diploma, the beneficiary enrolled in the Masters of Commerce Degree program at Osmania University, completing one year of graduate-level coursework. Mr. concluded the following:

> The credit hours, coursework, research, and examinations required of candidates at Osmania University for one year of graduate studies in the Master of Commerce Degree Program, taken together with the prior completion of three years of advanced undergraduate academic studies in Business Administration at Nagarjuna University and one year of undergraduate academic studies in Computer Science at Datapro Information Technology equate to the attainment of a Bachelor of Science in Business Management, with a concentration in Computer Science, from an accredited institution of higher education in the United States.

The director denied the petition because the regulations governing preference classification do not provide for the combining of multiple degrees in order to establish the equivalent of a U.S. baccalaureate degree.

This office does not find the letter convincing. While CIS may, in its discretion, use as advisory opinion statements submitted as expert testimony, 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). On appeal, counsel, submits evidence in the form of requested opinions from a CIS officer that appears contrary to CIS regulations. The record contains no evidence as to the specific questions being responded to, or whether, in fact, such questions relate to the adjudication of

decisions. In any event, regulations prevail over opinion in the absence of definitive evidence to the contrary. Furthermore, letters of correspondence issued by the Office of Adjudications are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter 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).

On appeal, counsel states that the beneficiary's completion of a bachelor's degree (three years) followed by the completion of a postgraduate diploma degree should be deemed the equivalent of a four year U.S. bachelor's degree. Counsel states that there is no law requiring a beneficiary to have a foreign four year degree, and bases his assertions, in part, on a letter from the Director of Business and Trade Services, CIS, who states, in a letter dated July 23, 2003, that the completion of a PONSI recognized postgraduate diploma should be deemed the equivalent of a United States Four year degree.

To determine whether a beneficiary is eligible for a third preference immigrant visa, Citizenship & Immigration Services (CIS), formerly the Service or INS, must ascertain whether the alien, is, in fact, qualified for the certified job. 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. CIS must look to the job offer portion of the alien 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).

In this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates, which when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U. S. degree is generally found to require four years of education. *See Matter of Shah,* 17 I&N Dec. 244, 245 (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. *Id.* at 245. *Shah* applies regardless of whether or not the petition was filed as a skilled worker or professional.

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 above regulations use 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.

Additionally, the petitioner has not indicated that a combination of education and experience can be accepted as meeting the minimum education requirements stated on the labor certification, or that experience could be accepted in lieu of education accolades. Thus, the combination of education and experience, end experience alone, may not be accepted in lieu of education. The beneficiary was required to have a bachelor's degree 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 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.