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U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

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FILE: LIN 02 252 50857 Office: NEBRASKA SERVICE CENTER Date: DEC 29 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.

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 on appeal. The appeal will be dismissed.

The petitioner is a manufacturing company. It seeks to employ the beneficiary permanently in the United States as a programmer/analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the four years of college leading to a bachelor's degree or foreign equivalent degree required by the Form ETA 750, and denied the position accordingly.

On appeal, counsel submits a brief and additional evidence.

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.

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 granting 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.

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, in pertinent part:

> *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.

The petitioner must demonstrate that the beneficiary met the qualifications stated on the Form ETA 750 on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted for processing on March 7, 2000. The Form ETA 750 states that the proffered position requires, *inter alia*, four years of college and a bachelor's degree in computer science or software technology.

With the petition, counsel submitted a transcript of classes [redacted] apparently the beneficiary, took at [redacted] an autonomous college affiliated with the University of Madras, India. That transcript shows that [redacted] ttended that college for three years. Counsel also submitted a provisional certificate, dated August 29, 1997, awarding a Bachelor of Science degree from the [redacted] That provisional certificate states that [redacted] majored in physics.

Counsel submitted four transcripts from the National Institute of Information Technology (NIIT) also in [redacted] Each transcript covers one-half of one year.

Counsel submitted a credential evaluation from an education service, dated August 24, 2000. The evaluation states that the beneficiary's Bachelor of Science degree from the University of Madras is the equivalent of three years of undergraduate study in the United States, and that the beneficiary's graduation from the three-year program at NIIT, with a major or specialization in systems management, is the equivalent of a U.S. bachelor's degree. That report further states that the beneficiary's education, taken as a whole, is the equivalent of a U.S. bachelor's degree in physics and system management.

On November 29, 2002, the Director, Nebraska Service Center, reissued a Request for Evidence in this matter. The director noted that the educational evaluation indicated that the beneficiary had graduated from a three-year program at NIIT, but that the petitioner had provided transcripts to show only attendance at two years of classes. The director requested that the petitioner explain that discrepancy and provide an official record from NIIT showing the dates the beneficiary attended that institution the number of classroom hours she attended.

In response, counsel submitted a letter, dated December 27, 2002. In that letter counsel stated that an academic year in the United States is comprised of two 15-week semesters. In support of that proposition counsel submitted an article by the registrar of Queens College, New York. Counsel noted that the beneficiary's program at NIIT included 104 calendar weeks, and stated that it is therefore the equivalent of three years of study at a U.S. institution.

The director determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree, and, on March 20, 2003, denied the petition.

On appeal, counsel submits a letter, dated January 7, 2003, from the Director, Business and Trade Services, of the INS, which is now the CIS. That letter states that the language of 8 C.F.R. § 204.5(k)(2), "a foreign equivalent degree," is not meant to preclude a beneficiary with several degrees.[1]

Counsel submits the INS Liason (sic) Minutes of a September 30, 1997 meeting between various INS, now CIS, officials and the representatives of an immigration lawyers' association. Those minutes state the position of those INS officials that a foreign equivalent degree may be substituted for a degree requirement on a Form ETA 750, notwithstanding that the requirements as stated on the Form ETA 750 do not explicitly allow for the substitution of a foreign equivalent degree.

Finally, counsel submits a letter, dated March 11, 2003, from another educational evaluation service. That letter states that some countries offer both three and four-year undergraduate degree programs, and that university admissions officers and credential evaluators generally accept the four-year degrees as being the

[1] Counsel also submits the letter, dated December 27, 2002, to which the Director, Business and Trade Services was apparently replying. That letter makes clear that it is asking the question in the context of an alien with an advanced degree petitioning for a visa pursuant to 8 C.F.R. § 204.5(k), rather than a beneficiary similarly situated to the beneficiary in the instant case.

equivalent of a U.S. bachelor's degree. That letter does not state that three-year bachelor's degrees are generally, or ever, accepted as the equivalent of a U.S. four-year degree. The letter adds that students in India with a three-year bachelor's degree may choose to obtain a master's degree.

Counsel argues, citing the educational evaluation previously submitted, that the beneficiary's education, taken in the aggregate, is the equivalent of a U.S. bachelor's degree. Counsel asserts that the beneficiary need not possess any single degree which is the equivalent of, or superior to, a U.S. bachelor's degree in computer science in order to qualify for the proffered position.

Counsel is apparently relying on the documents submitted on appeal as authority for that position. Counsel's evidence and authority, however, do not support his conclusion.

The January 7, 2003 letter from the Director, Business and Trade Services does not purport to issue an opinion pertinent to the instant visa category, but only pertinent to a visa filed pursuant to 8 C.F.R. § 204.5(k)(2). It is irrelevant to the instant visa category. Furthermore, letters and 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).

The INS Liaison Minutes of September 30, 1997 state that an equivalent foreign degree may be substituted for a U.S. bachelor's degree. This office does not contest that an equivalent foreign degree may be substituted for the bachelor's degree required by the Form ETA 750.

The Form ETA 750 states that the proffered position requires a bachelor's degree in computer science or software technology. The March 11, 2003 letter from the credential evaluation service neither states nor implies that a three-year bachelor's degree from India is the equivalent of a four-year U.S. bachelor's degree. Nothing in that letter relieves the petitioner of its burden of proving that the beneficiary has the requisite bachelor's degree or an equivalent foreign degree.

The beneficiary has no U.S. degree. The petitioner is obliged, therefore, to demonstrate that the beneficiary has a foreign degree equivalent to a U.S. bachelor's degree in computer science or software technology, as the Form ETA 750 in this case states that such a degree is a requirement of the proffered position.

The petitioner, relying on the beneficiary's three-year bachelor's degree plus additional study[2], attempts to demonstrate that the beneficiary has the equivalent of a bachelor's degree. Even if proven, that would be insufficient.

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[2] The educational evaluation submitted with the petition indicated that the petitioner had graduated from a three-year program at NIIT. Subsequently, counsel indicated that, although the program had been only two years in duration, it is the equivalent of three years of study in the United States. In fact, the evidence does not indicate that the beneficiary received a degree from NIIT.

The petitioner is obliged to show, not that the beneficiary's degree plus additional education is the equivalent of a U.S. bachelor's degree, but that the petitioner has either a U.S. bachelor's degree or a foreign degree that is the equivalent of a U.S. bachelor's degree. The laws and regulations pertinent to the visa category in the instant case sanction no substitution for that degree.

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(l), 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.