U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: EAC-00-285-51482 Office: VERMONT SERVICE CENTER Date: JUN 15 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien 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 employment-based preference visa petition was denied by the Director, Vermont Service Center. The director's decision to deny the petition was affirmed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen. The motion to reopen will be granted. The May 14, 2002 decision of the AAO will be affirmed.

The petitioner is an information technology company. It seeks to employ the beneficiary permanently in the United States as a network engineer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position asserted in the labor certification application. The AAO affirmed this determination on appeal.

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.

(Emphasis added.) 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 May 24, 2000.

The Form ETA 750 indicated that the position of network engineer required a bachelor's degree in any field and two years of experience in the job offered.

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 of Commerce degree from Shri Narsee Monjee College of Commerce & Economics of the University of Bombay located in Mumbai, India. A copy of the beneficiary's diploma indicates that the degree is awarded based on a three-year program. The petitioner initially submitted evidence of the beneficiary's evaluated credentials in the form of a letter from William Edelson, a consultant for ICETS, a private credential evaluation firm. The evaluation determined that the beneficiary "satisfied similar requirements for the completion of three years of academic study towards a Baccalaureate Degree from an accredited institution of tertiary education in the United States". This

evaluation stated that the beneficiary possessed the equivalent of a United States bachelor of science degree by virtue of the combination of his formal education and work experience. The director denied the petition because the regulations governing preference classification do not provide for the substitution of work experience in lieu of a foreign equivalent of a U.S. Baccalaureate degree. The AAO affirmed.

On motion, counsel submits an education evaluation from Morningside Evaluations and Consulting, written by [redacted] Professor of Mathematics at [redacted] of New York, who indicates that the beneficiary's training at the University of Bombay is the equivalent of a Bachelor of Science in Computer Information Systems in the United States. Counsel also submits a copy of a certificate awarding a Bachelor of Commerce degree to the beneficiary from the University of Bombay on March 4, 1992. The motion to reopen qualifies for consideration under 8 C.F.R. § 103.5(a)(2) because the petitioner is providing new facts with supporting documentation not previously submitted.

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).

The issue is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. Counsel submitted a letter of credentials evaluation from [redacted] representing Morningside Evaluations and Consulting. [redacted] states that the beneficiary enrolled in "the Honors Diploma in Network-Centered Computing Program offered by the NIIT, in India". According to [redacted] the program offered postgraduate level studies in Computer Applications and related fields. [redacted] indicated that based on the beneficiary's degree from the University of Bombay, the NIIT, and the number of years and hours of coursework, it was his conclusion that the "nature of the courses and the credit hours involved, and considering [the beneficiary's] completion of a Bachelor of Commerce degree, indicate that he (the beneficiary) satisfied substantially similar requirements to the completion of academic studies leading to a Bachelor of Science Degree in Computer Information Systems from an accredited institution of higher education in the United States". However, multiple degrees culminating in four years of education cannot meet the requirements of a singular "foreign equivalent degree" to a U.S. baccalaureate degree as required by 8 C.F.R. § 204.5(e)(2). The petitioner has not established that the beneficiary has a foreign degree that is equivalent to a U.S. baccalaureate degree as required by 8 C.F.R. § 204.5(1)(2). Therefore, the petitioner has overcome this portion of the director's decision.

ORDER: The motion to reopen is granted. The May 14, 2002 decision of the AAO is affirmed.