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

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: LIN 02 105 53753 Office: NEBRASKA SERVICE CENTER Date:

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 employment based immigrant 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 seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional. The petitioner is a computer-consulting firm. It seeks to employ the beneficiary as a programmer analyst. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor. The director denied the petition because he determined that as the beneficiary's education is not the foreign equivalent to a United States bachelor's degree in one of the specific fields of study specified by the petitioner on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's educational credentials are sufficient to meet the requirements of the visa classification.

Section 203(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(g)(2); *Matter of Wing's Tea House,* 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is November 20, 2000.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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 programmer analyst. In the instant case, item 14 requires that the applicant have four years of college culminating in a "Bachelor's" degree. The major field of study listed in the designated box within Item 14 reflects that the applicant's major must be computer science, engineering, or electrical/electronic engineering. The major field of study notation has an asterisk (*) by it. The asterisk indicates that further information appears in item 15. Item 15 states "*Computer Information Systems, Management Information Systems, Math, Mechanical Engineering or its foreign educational equivalent." According to the petitioner's Form, ETA -750A, item 14, the applicant must also have one year of employment experience in the position offered.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submits copies of the beneficiary's diplomas, transcripts and a copy of his diploma from the University of Madras, India. It indicates that he received a Bachelor of Commerce degree in 1995, following a three-year course of study. The record also contains a copy of a 1999 certificate of proficiency from Concourse Information Technology International Ltd. and a 1998 professional diploma from The National Institute of Information Technology, (NIIT), India.

A May 2002 evaluation from the International Credentials Evaluation and Translation Service (ICETS) was also submitted in support of the petition. This evaluation determines that the beneficiary's three-year Bachelor of Commerce degree equates to the U.S. equivalent of "three years of academic study towards a baccalaureate degree." It concludes that the combination of the beneficiary's Bachelor of Commerce degree and NIIT professional diploma represent the U.S. equivalent of a bachelor's degree in management information systems.

It is noted that *Matter of Sea Inc.,* 19 I&N 817 (Comm. 1988), provides the following:

> [CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The director denied the petition, concluding that the beneficiary's educational credentials are not an acceptable equivalency for a United States baccalaureate degree in one of the specific fields of study specified by the petitioner on the certified labor certification application. The AAO concurs.

On appeal, counsel asserts that the provisions relating to nonimmigrant classifications found at 8 C.F.R. § 214.2(h)(4)(iii) should determine the results in the instant case. Counsel's argument is not persuasive because the immigrant classification regulations applicable to this case do not contain similar provisions allowing the substitution of experience for formal education. Moreover, the college degree required by item 14 of this labor certification does not indicate that anything less than a full U.S. bachelor's degree or a foreign equivalent baccalaureate degree is acceptable to fulfill the position. It explicitly states that the proffered position requires a bachelor's degree, not a combination of experience or degrees, which could be considered the foreign equivalent of a bachelor's degree.

The regulations at 8 C.F.R. §§ 204.5(l)(2) and 204.5(l)(3)(ii)(C), with their singular use of the phrase "foreign equivalent degree," are also quite clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not any other combination of degrees, diplomas, or experience. Here, item 15 modifies the major fields of study that would be acceptable to include four additional alternative majors. It is also noted that although the preamble to the publication of the final rule at 8 C.F.R. § 204.5 in 1991 specifically dismissed the option of equating "experience alone" to the required bachelor's degree for a second preference classification as an advanced degree professional or as a professional under the third classification, similar reasoning would also prohibit the acceptance of an equivalence in the form of multiple lesser degrees, professional training, or any other level of education deemed to be less than a "foreign equivalent degree" to a United States baccalaureate degree. *See* 56 Fed. Reg. 60897 (Nov. 29, 1991).

Even if viewed as a petition for a skilled worker, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides that the evidence must show that the alien has the education, training or experience, and any other requirements of the individual labor certification. In this case, the labor certification does not define or accept any equivalency less than a bachelor's degree as the college degree required as set forth in item 14. CIS may not ignore a term, nor impose additional requirements in reviewing a labor certification. *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).

Based on a review of the requirements of the approved labor certification and the evidence submitted, the AAO cannot conclude that the petitioner has established that the beneficiary possesses either a United States bachelor's degree or a foreign equivalent degree as required by the terms of the labor certification. In absence of evidence that the beneficiary has a bachelor's degree in computer science, engineering, electrical/electronic engineering, management information systems, mathematics or mechanical engineering, rather than a foreign three-year bachelor of commerce degree, the petition 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 sustained that burden.

ORDER: The appeal is dismissed.