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

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U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: OCT 07 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: 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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 telecommunications software development firm. It seeks to employ the beneficiary in the United States permanently as a team leader. As required by statute, the petition is accompanied by an individual labor certification, the Application for Alien Employment Certification (Form ETA 750), approved by the Department of Labor.

Eligibility in this matter turns on whether the petitioner has established that the beneficiary met the petitioner's qualifications for the position as stated in the Form ETA 750 as of the petition's priority date. It is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The petition's priority date in this instance is June 29, 2001. The beneficiary's salary as stated on the labor certification is $90,000 per year.

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 the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions at the time of petitioning for classification under this paragraph.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies 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 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.

The petitioner initially submitted the evaluation of academics of Morningside Evaluations and Consulting, dated February 12, 2003 (MEC evaluation). It recognized a Bachelor of Science degree from Bangalore University in 1993 (BS 1993), based on examination marks, dated from April 1991 to July 1993, and concluded:

> The courses completed and the number of credit hours earned indicate that [the beneficiary] satisfied requirements substantially similar toward the completion of three [3] years of academic studies leading to a university degree from an accredited institution of higher education in the United States.

The MEC evaluation referenced a diploma from the National Center for Computing Techniques at Bangalore, India, dated October 29, 1994 (NCCT diploma), and stated:

> Additionally, [the beneficiary] entered the Diploma in Computer Applications program offered by NCCT and completed course work in his area of concentration, Computer Applications, which leads to a diploma from a university. . . . The courses completed and the number of credit hours earned and considering [the beneficiary's] completion of [the BS 1993] from Bangalore University, it is [sic] indicative that [the beneficiary] satisfied requirements substantially similar to those required toward the completion of academic studies leading to a university degree from an accredited institution of higher education in the United States.

The Form ETA 750, in Part A, block 14, indicated that the position of team leader required a bachelor's degree in computer science, math, engineering, or a related discipline, and two (2) years of experience in the job offered or the related occupation of software development. Block 15 added the special requirement that the beneficiary must have experience with PowerBuilder and Oracle.

The director determined that the petitioner failed to establish that the beneficiary had a bachelor's degree from an accredited university in the United States or an equivalent foreign degree, as provided in 8 C.F.R. § 204.5(l)(3)(ii)(C). Since the regulation acknowledges simply a foreign equivalent degree, the director did not recognize combinations, such as the BS 1993 and the NCCT diploma and, consequently, denied the petition.

On appeal, counsel asserts that Citizenship and Immigration Services (CIS), formerly the Service or INS, erred in refusing the combination of the BS 1993 and MCCT diploma, as equivalent to a four (4) year United States bachelor's degree. Indeed, the petitioner adds a third item to the combination, namely, a transfer certificate for 1994-1997 with a transcript of marks from Madras University (MU courses). MU courses reflected work toward a master's of computer applications. [1] A Consultant's Statement of Evaluation of Professional Education from the International Education Council (IEC evaluation), dated August 27, 2003, valued MU courses as one year of graduate level university studies. [2] The IEC evaluation regarded the BS 1993, MCCT diploma, and MU courses as equal a four-year bachelor degree at an accredited college or university in the United States.

Counsel asserts that:

> [The director] has decided that "equivalent" means equivalent foreign degree (in the singular). However, guidance from two different [CIS] letters from Efren Hernandez III, Director of Business and Trade Services, indicate [sic] that "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 that [sic] proper credential evaluations service finds that the foreign degree or degrees are the equivalent of the required U.S. degree, than [sic] the requirement may be met." The second letter states, "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 post-graduate diploma program may be deemed the equivalent of a four-year U.S. bachelor's degree. . . ." Clearly for employment-based immigrant petitions, [CIS] has clarified that the word "degree" should not be taken to literally mean "degree in the singular."

Counsel asserts that the CIS Director of Business and Trade Services dictates approval of the instant petition in letters dated January 7 and July 23, 2003 (CIS advisory letters). [3] On the contrary, they interpreted employment-based immigrant petitions under 8 C.F.R. § 204.5(k)(2) and did not encompass ones at hand under 8 C.F.R. § 204.5(l)(3)(ii)(C). Moreover, the MEC and IEC texts do not relate the MCCT diploma to a PONSI-recognized post-graduate diploma program.

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[1] Counsel believes that MU courses were newly discovered evidence, but dates on the exhibits indicate that they were available at the priority date and upon the submission of the Immigrant Petition for Alien Worker (I-140).

[2] Transcripts included two (2) years of MU courses, but the beneficiary passed only eight (8) of 16 courses and received no master degree.

[3] Furthermore, counsel attaches Questions & Answers (Q&A) from NSC Liaison Meeting (11/22/03) and highlights principles to apply if the director agrees to consider and approve a petition on a motion to reopen. The director did not agree in this instance, and the Q&A is unpersuasive.

Letters and correspondence issued by offices of CIS are not binding on the AAO. CIS advisory letters do not constitute official CIS policy and will not be considered as determinative in the adjudication of petitions or applications. Although such letters may be useful as an aid in interpreting the law, they 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 AAO relies on the plain, singular meaning of 8 C.F.R. § 204.5(l)(3)(ii)(C), to include a foreign equivalent degree as it applies to a bachelor's degree for a professional. It sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a four-year baccalaureate degree from a university in the United States. Counsel conceded that advisory findings of the Department of Labor in certifying Form ETA750 do not foreclose CIS review and the rejection of tiered degrees and diplomas.

The Form ETA 750 requires a bachelor's degree. Part A, block 14 did not enter quantity of education, but this degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

In addition, the Form ETA 750, in Part A, block 14, required two years (2) of experience and block 15 added the special requirement that the beneficiary must have experience with PowerBuilder and Oracle. The petitioner, in an employment verification dated January 17, 2003, stipulated that it employed the beneficiary since only November 1999. The petitioner offers no other evidence of the PowerBuilder and Oracle experience before that date. The petitioner knew that its Form ETA 750 in blocks 14 and 15 required two (2) years of experience. The offer of proof reflected, at most, 19 months of experience under special requirements as of the priority date, June 29, 2001. For this additional reason, CIS may not approve the instant petition.

A petitioner must establish the elements for the approval of the petition at the priority date, June 29, 2001 for this petition. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

MU courses add another tier to the foreign equivalent of a four-year bachelor's degree from an accredited college or university in the United States. They multiply the difficulty of showing a foreign equivalent decree. A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 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). *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

On appeal, counsel contends that:

> . . . Simply because India provides three-year Bachelor's degrees instead of four-year degrees, [CIS] found that [the beneficiary] does not meet the requirement of the Alien Labor Certification. This reasoning is flawed and discriminatory and therefore fundamentally wrong under notions of equal protection.

It would appear that the discrimination works against the degree holder who must expend four (4) years for the degree that another attains in three (3). This petition is not the place to resolve discrimination.

The AAO has only that authority specifically granted to it by the Secretary of the United States Department of Homeland Security (DHS). *See* DHS Delegation Number 0150.1 (effective march 1, 2003); *see also* 8 C.F.R. §2.1 (2004). The jurisdiction of the AAO extends only to those matters described in 8 C.F.R. § 103.1(f)(3)(E)(iii), in effect on February 28, 2003. They do not include the petitioner's claim of violation of the equal protection of the laws or of its privileges and immunities.

The petitioner has not established that the beneficiary has a bachelor's degree or special requirements of experience, as exacted by Form ETA 750, as of the priority date. Therefore, the petitioner has not overcome this portion of the director's decision.

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.