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

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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identifying data deleted to prevent unwarranted invasion of privacy

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 computer consulting company. It seeks to employ the beneficiary permanently in the United States as a database administrator. 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 college degree required by the labor certification and denied the petition 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.

If the petition is for a professional pursuant to 8 C.F.R.§204.5(l), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to 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. The petitioner must demonstrate that such a degree is ordinarily a requirement for entry into the field of the proffered position. The petitioner must also demonstrate that the beneficiary possessed any other qualifications stated on the Form ETA 750 on the priority date.

If the petition is for a skilled worker, the petitioner must demonstrate that, as of the priority date, the beneficiary possessed all of the experience, training and educational requirements stated on the Form ETA 750. 8 C.F.R. § 204.5(d). *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted for processing on October 23, 2002. The Form ETA 750 states that the proffered position requires a four-year bachelor's degree in computer science and three years of experience. The Form ETA 750 does not indicate that any other education, experience, or combination of education and experience, may be substituted for the requisite four-year bachelor's degree in computer science.

With the petition, counsel submitted evidence sufficient to demonstrate that the petitioner has the requisite three years of experience in the proffered position.

The remaining issue is whether the beneficiary has the requisite college degree. Pertinent to that issue, counsel submitted a course certificate and other evidence demonstrating that the beneficiary has a degree in history from Bangalore University in Bangalore, India. The course certificate from Bangalore University indicates that the beneficiary studied there from 1989 through 1991. Those dates encompass a maximum of three years. Counsel also submitted various certificates showing passage of computer related courses and seminars.

Counsel also submitted a credential analysis/evaluation report, dated May 12, 2000, from an evaluation service. That report states that the beneficiary's bachelor's degree is academically equivalent to a U.S. bachelor of arts in history, economics and political science with a second major in computer science. In so stating, the evaluator appears to be stating that the beneficiary's degree, taken alone, is the equivalent of a U.S. bachelor's degree with a major in computer science. The paragraph which follows, however, makes clear that the evaluator is also considering the beneficiary's experience in stating that he has the equivalent of a bachelor's degree with a major in computer science.

Because the evidence submitted was insufficient to demonstrate that the beneficiary has the requisite degree, the Nebraska Service Center, on September 26, 2003, requested additional evidence pertinent to the beneficiary's education. The Service Center noted that the evidence must demonstrate that the beneficiary has a four-year bachelor's degree in computer science.

The beneficiary responded to that request with a letter dated December 5, 2003. With that letter, the beneficiary submitted his very ample résumé and a certificate of evaluation from an educational evaluator stating that the beneficiary's education and professional training are the equivalent of a U.S. four-year college bachelor's degree in computer science.

The director determined that the evidence submitted did not establish that the beneficiary has a United States four-year baccalaureate degree in computer science or an equivalent foreign degree, and, on May 17, 2004, denied the petition.

On appeal, counsel appears to assert that the beneficiary's three-year bachelor's degree in history, economics, and politics is equivalent to a U.S. four-year degree in computer science. Counsel urges, apparently in the alternative, that the beneficiary's degree in history, economics, and politics, coupled with his studies in computer related subjects is the equivalent of a U.S. four-year bachelor's degree in computer science. Finally, in the event that the beneficiary is not qualified for a professional position under section 203(b)(3)(A)(ii) of the Act, counsel argues that the petition should have been considered as a petition for a

skilled worker under section 203(b)(3)(A)(i) of the Act. In his brief, counsel asserts that nothing in the regulations precludes the consideration of a combination of experience and education as equivalent to a degree and concludes: "Where there is a question as to the meaning of the requirements specified on [an ETA-750], interpretations of the meaning can only be accomplished with consultation with the United States Department of Labor who issued the labor certification." Counsel relies on *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971); *Matter of Arjani*, 12 I&N Dec. 649 (Reg. Comm. 1967); and two letters from Mr. Efren Hernandez III, Director of the Business and Trade Services Branch of CIS's Office of Adjudications. Counsel also submits yet another evaluation concluding that the beneficiary's experience and education combined are the equivalent of a four-year bachelor's degree in computer studies.

All of counsel's assertions relate to an alleged error in adjudicating the petition under the professional classification. Counsel misreads the director's decision, which does not decide whether the petitioner is a professional. Rather, the director concludes: "because the evidence does not establish that the beneficiary held a four year bachelor's degree when the request for certification was accepted, he cannot be found to have met the minimum requirements stated on the Form ETA-750 as of that date." Both *Katigbak* and *Arjani* deal with the issue of whether an alien was eligible as a professional. Neither decision relates to labor certifications[1] and whether a combination of education and experience can serve to meet a specific degree requirement stated on a labor certification. Thus, those decisions are not persuasive. The letters from Mr. Hernandez are also not persuasive. Office of Adjudications letters 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 letters 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).

To determine whether a beneficiary is eligible for a third preference immigrant visa, as a professional **or as a skilled worker**, Citizenship and 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. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the 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).

Contrary to counsel's implication at the end of his brief that the labor certification in this case can be interpreted in more than one way, the Form ETA 750 clearly requires a four-year bachelor's degree in computer science. No alternative is specified as acceptable. A foreign three-year bachelor's degree is not a "foreign equivalent degree" to a United States bachelor's degree. As the director stated, a United States bachelor's degree generally requires four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm.

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[1] Curiously, counsel relies on these cases despite criticizing the director for relying on another pre-labor certification case, *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977), discussed *infra*.

1977).[2] Counsel asserts that the Commissioner in *Shah* was more concerned with the definition of a "special" degree and a distrust of transcripts than with the amount of time it took to obtain the degree. The Commissioner, however, stated: "Thus, [the beneficiary] could only have completed a 3-year course of study, which is not equivalent to a United States baccalaureate degree, usually requiring 4 years of study." This language is unambiguous and supports the director's decision and our affirmation of that decision.

The director further stated that, according to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. After 12 years of primary and upper primary school, a bachelor's degree in the arts, commerce, or the sciences may be earned after just three years of higher education. A bachelor's degree in a professional field of study such as agriculture, dentistry, engineering, pharmacy, technology, or veterinary science generally requires four years of higher education. *See generally* Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework – Degree Structure*, (last updated October 1, 2001), available at http:\\www.education.nic.in\htmlweb\higedu.htm (printed copy incorporated into the record of proceeding). If supported by a proper credentials evaluation, a four-year bachelor's degree from India might reasonably be deemed to be the "foreign equivalent degree" to a United States bachelor's degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States bachelor's degree because the degree did not require four years of study. *Matter of Shah,* 17 I&N Dec. at 245. Based on the same reasoning, the beneficiary's three-year bachelor's degree from Bangalore University will not be considered a "foreign equivalent degree" to a four-year U.S. bachelor's degree for purposes of this preference visa petition.

Further, notwithstanding that at least part of one of the evaluations submitted appears to indicate that the beneficiary's degree, taken alone, is the equivalent of a degree in computer science, this office notes that the beneficiary's degree is not in computer science, but in the unrelated fields of history, economics, and politics.

The AAO may, in its discretion, use as advisory opinions submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the AAO is not required to accept or may give less weight to that evidence. *Matter or Caron International*, 19 I&N Dec. 791 (Comm. 1988). Here, the implication that the petitioner's degree itself is equivalent to a degree in computer science is simply incredible.

The assertion that the beneficiary's degree, coupled with his other studies and/or his employment experience, is the equivalent of a U.S. four-year bachelor's degree in computer science is inapposite. We reject counsel's assertion that CIS must support its refusal to consider a combination of education and experience with a specific regulation or court decision. Rather than requiring CIS to support its position on this issue, it is counsel who must support his contention that the four-year degree specified on the labor certification must be interpreted as anything other than what it says. We note that 8 C.F.R. § 204.5(k)(2) allows an alien to substitute a bachelor's degree plus five years of progressive experience for an advanced degree and 8 C.F.R. § 214(h)(2)(iii)(D)(5) permits the substitution of three years of experience for one year of college for special occupation nonimmigrants.

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[2] Regardless of whether this case dealt with a labor certification, it specifically concluded that a three-year degree is not equivalent to a U.S. bachelor's degree, a determination that transcends whether or not an individual is a professional, as was at issue in the cases cited by counsel and discussed *supra*.

Thus, clearly CIS' predecessor agency was capable of issuing regulations providing for the substitution of experience for education in a limited context. Despite this capability, no such provisions appear at 8 C.F.R. § 204.5(l) and its subparagraphs relating to professionals and skilled workers. Thus, there is no regulatory basis to find that experience may be substituted for a degree for professionals or, if there exists a degree requirement on the labor certification, for skilled workers. It remains, the labor certification, prepared and filed by the petitioner, clearly requires a four-year bachelor's degree in computer science. The labor certification lists no acceptable alternatives. The evidence submitted does not demonstrate that the beneficiary has such a degree. Therefore, the petition may not be approved.

As stated above, that result is the same whether the petition is analyzed as a petition for a professional under section 203(b)(3)(A)(ii) of the Act or as a petition for a skilled worker under section 203(b)(3)(A)(i) of the Act. If the petition is analyzed as a petition for a skilled worker, the beneficiary must still demonstrate that he has the education and experience stipulated on the Form ETA 750. *Silver Dragon Chinese Restaurant*, 19 I&N Dec. at 406.

In this case, the Form ETA 750 clearly requires a four-year bachelor's degree in computer science. The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has such 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.