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U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: **MAR 25 2010**
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner claims to be a software consulting business. It seeks to permanently employ the beneficiary in the United States as a software engineer. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the instant petition is March 17, 2003, the date the labor certification was filed with the DOL. See 8 C.F.R. § 204.5(d).

As set forth in the director's April 6, 2005 denial and July 23, 2005 affirmation of the denial following the petitioner's motion to reopen and reconsider, the primary issue on appeal is whether the beneficiary possesses a foreign degree that is equivalent to a U.S. baccalaureate as required by the requested immigrant visa preference category. The AAO will also consider whether the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification.²

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b); see also *Janka v. U.S. Dept. of Transp.*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. See e.g. *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.³

¹Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

²An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. See *Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

³The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in

In order to classify the beneficiary in this employment-based preference category, the petitioner must establish that the beneficiary is an advanced degree professional.⁴

The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as follows:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The record of proceeding contains the diploma and transcripts for the beneficiary's three-year bachelor of science degree from the University of Bombay, India, and transcripts for two semesters of courses from the National Institute of Information Technology, India (NIIT).

The record also contains an evaluation of the beneficiary's credentials by [REDACTED] for International Credentials Evaluation and Translation Services, dated November 2003. The evaluation states that the beneficiary's three-year bachelor of science degree from India is equivalent to three years of study towards an unspecified bachelor of science degree from an accredited college or university in the United States; and that the beneficiary's one year of study at NIIT is equivalent to one year of study towards a bachelor's degree in computer science from an accredited college or university in the United States. The evaluation concludes that the combination of the beneficiary's three-year bachelor of science degree and his one year of study at NIIT are equivalent to a bachelor's degree in computer science from an accredited college or university in the United States.

For the advanced degree professional classification, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an "official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent *degree*."⁵ (Emphasis added.) Moreover, the commentary accompanying the proposed advanced degree professional

the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

⁴8 C.F.R. § 204.5(k)(3).

⁵For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study." We cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification.

regulation specifically states that a "baccalaureate means a bachelor's degree received *from a college or university*, or an equivalent *degree*." (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991).

The petitioner has not established that the beneficiary possesses a single foreign degree issued by a college or university that is equivalent to a U.S. bachelor's degree as required by 8 C.F.R. § 204.5(k)(2). According to its website, NIIT is a "Global Talent Development Corporation, building a skilled manpower pool for global industry requirements."⁶ NIIT is a publicly-traded corporation that provides technical instruction.⁷ It is not an accredited college or university. It is not deemed to be a university by India's University Grants Commission.⁸

On appeal, counsel submits copies of two letters dated January 7, 2003 and July 23, 2003, respectively, between [REDACTED] Business and Trade Services of the legacy Immigration and Naturalization Service and [REDACTED] expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). In the July 23, 2003 letter, Mr. [REDACTED] states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree. It is noted that private discussions and correspondence solicited to obtain advice from USCIS are not binding on the AAO or other USCIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" from a college or university, the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act.

Beyond the decision of the director, the petitioner has also failed to establish that the beneficiary meets the minimum requirements for the offered position. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I. & N. Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore

⁶<http://niit.com/aboutniit/Pages/Overview.aspx> (accessed February 16, 2010).

⁷<http://niit.com/investorrelations/Pages/InvestorRelations.aspx> (accessed February 16, 2010).

⁸<http://www.ugc.ac.in/inside/deemeduniv.html> (accessed February 16, 2010).

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); *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. Coorney*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the submitted labor certification states that the offered position requires an individual with a master's degree in computer science, CIS, MIS, science, statistics, computer programming or related field; and 24 months of experience in the job offered or in the related occupation of project manager (IT), senior business manager (IT), senior consultant, or senior business development manager (IT) or related occupation. Alternatively, an individual could qualify for the offered position with a bachelor's degree and five years of progressive experience. Accordingly, the labor certification explicitly requires a master's or bachelor's degree. The petitioner has not established that an individual could qualify for the offered position with anything other than a master's or bachelor's degree (such as a combination of lesser degrees and/or experience). Accordingly, the petitioner has not established that the beneficiary meets the minimum qualifications of the offered position, and the petition will also be denied for this reason.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises*, 229 F. Supp. 2d at 1043.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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.