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

U.S. Citizenship and Immigration Services

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date:
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AUG 2 9 2005

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

beneficiary's 1992 honors diploma and grade transcripts from the National Institute of Information Technology (NIIT) of Madras, India, as well as a copy of a diploma from the University of Madras showing that the beneficiary was awarded a Bachelor of Commerce degree in April 1991. His grade transcripts reflect that this degree represented three years of study. The petitioner offered copies of the beneficiary's secondary school certificates and grade transcripts from 1985 and 1987, as well as a copy of a certificate from Bhari Information Technology Systems Pvt. Ltd. in Madras, India, indicating that the beneficiary completed a course in "Oracle" during the period between July and October 1994. The petitioner further included copies of grade transcripts from 1993, 1994, 1995, and 1996 representing courses taken at the University of Madras. No copy of any diploma covering this period was included.

The petitioner also submitted an academic evaluation report from [redacted], Ph.D., dated May 29, 2001. He concludes that the beneficiary's studies represent the U.S. equivalent of a master's degree with a double major in business administration and management information systems. Dr. [redacted] states that his conclusion is based upon the beneficiary's diploma and transcript reflecting a three-year Bachelor of Commerce degree, a diploma with transcript indicating a 1996 Master of Commerce degree from the University of Madras, and the beneficiary's diploma from NIIT.

On August 12, 2003, the director requested additional evidence from the petitioner establishing that the beneficiary has the required education as set forth in the ETA 750A. The director advised the petitioner that the regulations governing immigrant visas do not provide for a combination of programs to be deemed the equivalent of a bachelor's degree if the ETA 750 specifies that an alien must have a bachelor's degree.

In response, counsel for the petitioner submitted copies of two letters dated January 7, 2003, and July 23, 2003, respectively, from [redacted] of the former Immigration and Naturalization Service (INS) Office of Adjudications to counsel in response to their queries. In both letters, Mr. [redacted] expresses 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). Mr. [redacted] states that he believes that a single foreign degree is not required to satisfy this equivalency.

The petitioner also submits another letter, dated September 23, 2003, from Dr. [redacted] He maintains that the beneficiary's completion of the NIIT course could be considered as qualifying for college credit as a learning experience occurring outside the college classroom, similar to those reviewed by a not-for-profit education advisory service called the National Program on Non-collegiate Sponsored Instruction (PONSI), for academic recognition. He states that The University for the State of New York recognizes PONSI's recommendations.

The director denied the petition on March 22, 2004. The director found that the evidence submitted did not meet the requirements of the approved labor certification because the beneficiary does not possess a U.S. bachelor's degree in the specified major or in a related major listed on the ETA 750.

On appeal, counsel asserts that it is entirely appropriate for petitioners to offer a combination of degrees to constitute the equivalent of a U.S. baccalaureate degree and that Mr. [redacted] opinion on the interpretation of the U.S. equivalence of foreign academic credentials should be given deference. The petitioner's assertion is not persuasive in this matter. It is noted that Mr. [redacted] letters both involved the interpretation of a different regulatory provision than that guiding the present case, i.e., an equivalent

of a U.S. advanced degree, not a baccalaureate degree. Moreover, private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS 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).

CIS is bound to follow the pertinent regulatory guidelines pursuant to 203(b)(3)(A)(ii) of the Act. CIS jurisdiction includes the authority to examine an alien's qualifications for preference status and to investigate the petition under section 204(b) of the INA, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *Madany 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 v. Coomey*, 662 F.2d 1 (1st Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-FengChang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). 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, even where a classification may not require a bachelor's degree. In this case, the ETA 750 explicitly states that the proffered position requires a bachelor's degree, not a combination of experience, certificates or degrees, which could be considered the equivalent of a bachelor's degree in a particular field. The field of major study is listed as computer science or one of several related fields identified in the addendum to item 14. 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. This labor certification does not define or accept any equivalency less than a bachelor's 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 Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) also provides in pertinent part:

> 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 member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for an entry into the occupation.

We find that "an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration or study" is applicable to what constitutes evidence of a degree. As also noted above, no official college or university record showing the date of the beneficiary's Master of Commerce degree was submitted to the record. Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States bachelor's degree, CIS will recognize a foreign equivalent bachelor's degree to a United States baccalaureate. The above regulation uses the singular description of a 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 the foreign equivalent of a

U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

The labor certification and regulation cited above clearly require an applicant for the position of software engineer to have a U.S. bachelor's or a foreign equivalent degree.

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 combined multiple 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).

In view of the above, Dr. [redacted] evaluation combining the beneficiary's studies at the University of Madras and his NIIT diploma cannot be considered probative of the beneficiary's credentials as required by the terms of the labor certification. 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, the Service 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 petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

Beyond the decision of the director, it is noted that the only financial information submitted in support of the petition consists of a 2001 federal tax return and 2001 financial statements. The preference petition was filed on April 4, 2003. As the regulation at 8 C.F.R. § 204.5(g)(2) requires a petitioner to demonstrate its *continuing* ability to pay the proffered wage, the record's omission of any financial documentation subsequent to 2001 also may constitute a basis to deny the petition. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center 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); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis).

The petition will be denied for the above-stated reasons, with each considered as an independent and alternative basis of denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.