U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: SEP 02 2005

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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 is a manufacturer of shipping containers & related products. It seeks to employ the beneficiary as an ERP financial analyst. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated 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, counsel asserts that the beneficiary has the necessary educational credentials to meet the qualifications set forth in the approved labor certification.

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 the granting of 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.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), 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. *See* 8 C.F.R. 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is August 13, 2002.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (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 ERP financial analyst. In the instant case, along with the required number of years of experience and acceptable related occupation, item 14 reflects that an applicant must have a Bachelor's degree in computer science, engineering, math, physics, or manufacturing. Item 15 states that the educational requirement may be met by equivalent foreign degree.

As evidence of the beneficiary's formal education, the petitioner initially submitted a copy of the beneficiary's diploma from Berhampur University in India showing that he was awarded a Bachelor of Commerce degree in 1991. Two grade transcripts from 1991 accompany this diploma. The evidence also includes a final examination certificate from The Institute of Chartered Accountants of India indicating that the beneficiary passed the final examination in May 1995 and a copy of a final examination certificate from The Institute of Cost and Works Accountants of India showing that the beneficiary passed the final examination in December 1995.

The petitioner also submitted an academic evaluation report from Educated Choices, LLC signed by [redacted] dated March 9, 2001. He determines that the beneficiary's studies at Berhampur University represent a three-year course of academic study and that the additional certificates from The Chartered Accountants of India and The Institute of Cost and Works Accountants of India represent and additional four years of study [redacted] concludes that the combination of the beneficiary's degree from Berhampur and the beneficiary's accountant's certificates represents an achievement equivalent to a "Master's Degree in Accounting as awarded by a regionally accredited U.S. college or university."

The director denied the petition on May 6, 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 or a foreign equivalent degree as required by the ETA 750 and applicable regulations.

On appeal, the petitioner, through counsel, submitted a copy of a letter, dated January 7, 2003, from Efren Hernandez III of the former Immigration and Naturalization Service (INS) Office of Adjudications to different counsel in response to her December 2002 inquiry. In this letter [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) [redacted] states that he believes that a single foreign degree is not required to satisfy this equivalency. Counsel asserts that this letter supports the approval of the petition based on the beneficiary's cumulative academic credentials.

Counsel's assertion is not persuasive in this matter. It is noted that [redacted] letter 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 reference to the acceptance of an equivalent foreign degree on the ETA 750A merely restates the regulatory language at 8 C.F.R. § 204.5(l)(3)(ii)(C), *infra.* 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 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. 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 an ERP financial analyst 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, [redacted]valuation combining the beneficiary's studies at the Berhampur University and his two certificates cannot be considered probative of the beneficiary's credentials as required by the terms of the labor certification. The AAO finds that passage of the two professional examinations as demonstrated by the two certificates in the record does not establish that the beneficiary has earned any additional degree or degrees from a college or university. Nothing in the record suggests that either the Institute of Chartered Accountants of India or the Institute of Cost and Works Accounts of India is a college or university that awards degrees in specific areas of concentration. The record does not contain an official college or university record from either institute showing that the beneficiary has been awarded a degree. Neither the certificates nor the educational evaluation state that the beneficiary has earned any academic degree aside from the 1991 bachelor's degree. 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.

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.