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U.S. Department of Homeland Security
20 Mass. Ave. NW, Rm. A3100
Washington, DC 20529



**U.S. Citizenship
and Immigration
Services**

[Handwritten signature]

FILE:

EAC 04 046 50295

Office: VERMONT SERVICE CENTER

Date:

JAN 11 2006

IN RE:

Petitioner:

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:

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.

A handwritten signature in black ink, appearing to read "Robert P. Wiemann".

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an information technology company. It seeks to employ the beneficiary permanently in the United States as a computer software applications engineer. 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 requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, the 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 the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on December 5, 2001. The labor certification states that the position requires two years experience and a bachelor's degree or equivalent in any field.

With the petition the petitioner submitted, among other items:

- An original ETA 750;
- A credential's and equivalent work-experience evaluation dated November 4, 1999, by the Trustforte Corporation, with a copy of a University of Bombay diploma certifying that the beneficiary had obtained a three-year Bachelor of Commerce Degree issued on July 30, 1988;
- A September 6, 2002 letter from Silverline Technologies, Inc., stating the beneficiary had worked for two years and nine months on computer software projects; and,
- A November 9, 1999 letter from Lamda Data Systems indicating that the beneficiary had worked six months developing computer software.

On August 6, 2004, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite bachelor's degree or equivalent as specified by the ETA 750.

On appeal, counsel asserts that the director erred by determining that the petitioner sought classification of the beneficiary as a professional, a category wherein beneficiaries are required to possess a baccalaureate degree and establish that they qualify as professionals. She asserts since the Form I-140 does not ask the petitioner to choose to classify the beneficiary as a skilled worker or a professional, the director must grant the petition if the evidence establishes the beneficiary qualifies for either third-preference category. She further states that the ETA 750 asks for a baccalaureate degree in any field, the beneficiary qualifies.

The record indicates that the beneficiary holds a bachelor's degree from the University of Bombay in Commerce. The credentials evaluation states that this degree is the equivalent to three years undergraduate study in an accredited U.S. college or university. Counsel asserts that this degree meets the requirements of the ETA 750 specifying that the beneficiary possess a bachelor's or the equivalent. She notes that the ETA 750 does not contain a specific number of years of years of required college education. Nevertheless, precedent has established that a bachelor's degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's degree from the University of Bombay cannot be considered a foreign equivalent degree to a U.S. bachelor's degree. The AAO interprets *Matter of Shah* to hold that bachelor degree equivalencies must be four-year programs. The exceptions signified by the term "generally" are for those situations when the beneficiary completes a four-year program of study in less than four years because he has received advanced credit, taken summer sessions or carried extra course loads.

The record contains an evaluation from Trustforte Corporation, which states that the beneficiary obtained a three-year bachelor's degree in commerce, and has, as a result of progressively more responsible employment experiences, an educational background the equivalent of an individual with a Bachelor of Science degree in Management Information Systems from an accredited university in the United States. 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); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. The employer did not specify in the ETA 750 that the equivalent work experience would qualify in place of a bachelor's degree; the director correctly determined that work experience could not substitute for formal education. The director's decision to deny the petition must be affirmed.

The evidence submitted does not demonstrate that the beneficiary meets the requirements of the ETA 750. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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.