

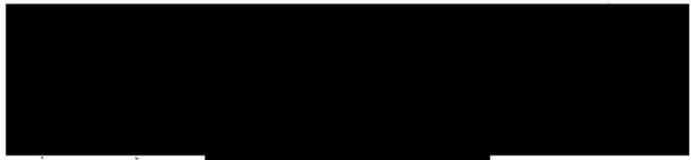
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U.S. Citizenship
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Services

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FILE: [Redacted]
LIN-03-254-52591

Office: NEBRASKA SERVICE CENTER

Date: DEC 26 2007

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: 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.


Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained and the petition will be approved.

The petitioner is an accounting, consulting and taxation services firm. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL) accompanied the petition. The acting director (director) determined that the petitioner had not established that the beneficiary had a bachelor's degree or the equivalent in accounting as required by the Form ETA 750 as certified. Therefore, he denied the petition.

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 or seasonal nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. See 8 C.F.R. § 103.2(b)(1), (12). See also *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. See 8 C.F.R. § 204.5(d). The priority date for the instant petition is January 29, 2003. On the Form ETA 750B, signed by the beneficiary on December 17, 2002, the beneficiary claimed to have worked for the petitioner beginning in June 2001 and continuing through the date that the Form ETA 750B was signed.

The Form I-140, Immigrant Petition for Alien Worker, was submitted on August 25, 2003. On the petition, the petitioner claimed to have been established in 1990 and to currently have three full-time employees and two contract workers who serve as certified public accountants. Where the petitioner was to state its gross annual income and net annual income on the petition, it failed to provide any information, but instead wrote "See Attached." See Form I-140, Part 5.

In a request for evidence (RFE) dated March 23, 2004 the director requested additional evidence pertaining to the beneficiary's education and the petitioner's ability to pay the proffered wage. In response to the RFE the petitioner submitted additional evidence which the director received on June 15, 2004.

In a decision dated July 29, 2004, the director determined that the evidence did not establish that the beneficiary had a bachelor's degree or the equivalent in the field of accounting as required by the Form ETA 750. Therefore, the director denied the petition.

On appeal, counsel submits two briefs and additional evidence. Counsel states on appeal that evaluation reports of the beneficiary's education in the record find that, based on the beneficiary's education alone, the beneficiary has the equivalent of a U.S. bachelor's degree in business administration with a concentration in accounting. Counsel states that evidence submitted on appeal provides relevant details of the system of higher education in India in the field of accounting. In addition, counsel urges that CIS analyze the Form I-140 as a petition for a

skilled worker position. Counsel also indicates that because the subject matter of some of the beneficiary's law school courses related to business and accounting that the beneficiary's law degree should be taken into consideration when determining whether the beneficiary has earned a bachelor's degree or the equivalent foreign degree in accounting.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 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 submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in 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).

As set forth in the director's denial, the single issue in this case is whether the beneficiary has the requisite U.S. bachelor's degree in accounting or its equivalent as required by the Form ETA 750 as certified.

To determine whether a beneficiary is eligible for an employment-based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth on the Form ETA 750. 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, 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 of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). The Form ETA-750A, at blocks 14 and 15, sets forth the minimum education, training and experience that the applicant must have for the proffered position as follows:

- | | | |
|-----|------------------------------|---|
| 14. | Education (number of years) | |
| | Grade School | (no set number of years stated) |
| | High School | (no set number of years stated) |
| | College | 4 |
| | College Degree Required | Bachelors or Equivalent |
| | Major Field of Study | Accounting |
| | Training (number of years) | (no training required for the position) |
| | Experience (number of years) | |
| | Job Offered | 3 Yrs. OR |
| | Related Occupation | 3 Yrs. |
| | Related Occupation (specify) | Accounting Experience ¹ |
| 15. | Other Special Requirements | Passage of AICPA Examination ² |

¹ The three years of experience may be in the job offered or in related accounting experience.

² "AICPA Examination" refers to the American Institute of Certified Public Accountants Uniform CPA Examination.

The beneficiary stated his qualifications on the Form ETA 750B. In block 11, for information on the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), the beneficiary stated the following:

Schools, Colleges and Universities, etc.	Field of Study	From	To	Degrees or Certificates Received
Delhi University	Law	07/1988	06/1991	Degree in Law
Delhi University	Commerce - Major Accounting	07/1981	07/1984	BS in Accounting
Institute of Chartered Accountants of India	Accountancy	07/1984	08/1987	Certificate as a Chartered Accountant

The record contains a copy of a bachelor of commerce degree granted to the beneficiary on March 24, 1985 by the University of Delhi with accompanying course transcript. The transcript and the degree show that the course of studies for that degree was a three-year program. The record also contains a copy of a bachelor of laws degree granted to the beneficiary on May 31, 1992 by the University of Delhi with accompanying course transcript. That transcript shows a three-year course of studies. In addition, the record includes a copy of the beneficiary's Final Examination Certificate from the Institute of Chartered Accountants of India (ICAI) issued on July 14, 1987 which indicates that the beneficiary passed that examination during May 1987. Other documents in the record, such as the ICAI Manual relating to Students dated October 21, 1997 and the 2003 article "A Review of Indian Education and The Institute of Chartered Accountants of India with Recommendations" by [REDACTED] Ph.D., [REDACTED] Ph.D., and [REDACTED] M.A., at pages 11 through 12, indicate that, as the beneficiary had already completed a three-year degree in commerce (with coursework concentrated in accounting) before entering the ICAI, he would have been required to take an additional two and one-half to three years of theoretical and practical instruction in accounting prior to taking his final examination at the ICAI. The article "A Review of Indian Education and The Institute of Chartered Accountants of India with Recommendations," at page 9 and following, breaks this period of study down into its component academic credit hours and also explains that within the university system in India passage of the ICAI Final Examination represents the completion of a master's degree in accounting, such that passage of this examination qualifies one for entrance into Ph.D. programs in Indian universities.

This is sufficient to establish that the beneficiary had at least four years of college-level education as of the January 29, 2003 priority date, as required by block 14 of the ETA 750A. This analysis will develop this point further below.

The record contains copies of several evaluations of the beneficiary's education.

An evaluation report dated March 30, 2001 by Educational Credential Evaluators, Inc. (ECE) finds that the beneficiary's Bachelor of Commerce degree is equivalent to three years of undergraduate work at a college or university in the United States. The report also finds that an ICAI Certificate of Associate Membership issued to the beneficiary in 1987 is equivalent to a bachelor's degree in business administration with a major in accounting from a college or university in the United States. The record also contains a second evaluation report by ECE, dated September 17, 2003, which reaches the same conclusions as the March 30, 2001 report.

Both ECE reports refer to an ICAI Certificate of Associate Membership issued to the beneficiary. No copy of a certificate with that title is contained in the record. However, this office acknowledges that according to the ICAI Manual relating to Students and to the article "A Review of Indian Education and The Institute of Chartered

Accountants of India with Recommendations,” at page 10, the beneficiary’s ICAI Final Examination Certificate issued on July 14, 1987 qualified the beneficiary for Associate Membership in the ICAI.

The record also contains an evaluation report dated June 11, 2004 by the Foundation for International Services, Inc. (FIS) which finds that the beneficiary’s Bachelor of Commerce degree is equivalent to three years of university-level credit from a regionally accredited college or university in the United States. It also finds that the beneficiary’s Final Examination Certificate from the ICAI dated July 14, 1987 is equivalent to a bachelor’s degree in accounting from a regionally accredited college or university in the United States.

An evaluation report in the record by Morningside Evaluations and Consulting (Morningside) dated September 30, 2004 concludes that the beneficiary has the equivalent of a bachelor of business administration degree with a concentration in accounting from an accredited institution of higher education in the United States. The Morningside evaluation apparently looks to the beneficiary’s 1984 Bachelor of Commerce degree in accounting from the University of Delhi and to his 1992 Bachelor of Laws degree from the University of Delhi to reach this conclusion. This evaluation report places no reliance on the beneficiary’s ICAI Final Examination Certificate.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony such as educational credentials evaluations. However, where an opinion is not in accord with other information in the record or is in any way questionable, CIS is not required to accept that evidence, or may give less weight to it. *See Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The Morningside evaluation relies on the beneficiary’s bachelor of commerce degree and on his bachelor of laws degree to find that the beneficiary has the equivalent of a U.S. bachelor’s degree in accounting. This office finds that the beneficiary’s study of law and his degree in law is not relevant to the issue of whether the beneficiary has a bachelor’s degree or the equivalent with a major field of study in accounting, contrary to counsel’s assertions. Consequently, the Morningside evaluation will not be given weight in this analysis.

This office has also reviewed credentials evaluations information available at the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO, according to its website, www.aacrao.org, is “a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries.” Its mission “is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the information found on the online registration page for EDGE, <http://accraoedge.aacrao.org/register/index/php>, EDGE is a “web-based resource for the evaluation of foreign educational credentials.” The AACRAO EDGE database indicates that passage of the “ICAI Final Exam and Association [sic] Membership represents attainment of a level of education comparable to a bachelor’s degree in the United States.”³ See the attached printouts from the AACRAO EDGE database that include advice to college and university admissions officers regarding the passage of the ICAI final examination. The

³ The ICAI Manual relating to Students and “A Review of Indian Education and The Institute of Chartered Accountants of India with Recommendations” indicate that the ICAI does not offer “Association” Membership, only “Associate” Membership. Under “Author Notes” the EDGE database also refers to ICAI Associate Membership, not Association Membership. The AACRAO EDGE database apparently lists “Association” Membership rather than “Associate” Membership in its “Credential Advice” and “Advice to Admissions Officers” sections in error.

AACRAO EDGE database also confirms that "Associate Membership of the ICAI is a professional qualification awarded upon passing the ICAI Final Exam."

Also in the record is the notification to the beneficiary dated January 29, 2001 from the Colorado State Board of Accountancy notifying him that he had passed all sections of the AICPA Uniform CPA Examination. This office notes that when the beneficiary passed this exam in 2001 and subsequently obtained a CPA certificate on January 10, 2003 from the State of Colorado, a copy of which is also in the record, a prerequisite to such achievements in Colorado included a four-year bachelor's degree with a major in accounting or its equivalent.⁴ See the prerequisites to the AICPA Uniform CPA Examination for the State of Colorado as posted at the National Association of State Boards of Accountancy (NASBA) website <http://www.nasba.org/nasbaweb/NASBAWeb.nsf/wpecer?openform&stateabbrev=CO> (accessed October 30, 2007).⁵ See also [REDACTED], "Sunset Review of Public Accountancy Laws: The Colorado Experience," *Accounting Horizons*, June 1, 2001, <http://www.allbusiness.com/legal/laws/806058-1.html> (accessed November 14, 2007)(which indicates that in 2001 the Colorado legislature determined that a four-year bachelor's degree in accounting would be sufficient for certification as an accountant, and that to continue to also require a master's degree in accounting, otherwise known as the 150-credit hour requirement, would be an unnecessary added expense); and [REDACTED] and [REDACTED], "The 150-hour requirement and changes in the supply of accounting undergraduates: evidence from a quasi-experiment," *Issues in Accounting Education*, August 1, 2002, http://goliath.ecnext.com/coms2/gi_0199-2033977/The-150-hour-requirement-and.html (accessed October 30, 2007)(which indicates that Colorado officials repealed the 150-hour requirement in 2001 and determined that accountants would need only the four-year bachelor's degree in accounting to obtain certification.)

The regulation at 8 C.F.R. § 204.5(l)(2) states the following, in relevant part, regarding the professional employment-based, third preference immigrant visa category:

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 proffered position requires: a bachelor's degree in accounting or the foreign equivalent degree; passage of the AICPA Uniform CPA Examination; and three years of accounting experience. As such, the position requires much more than the regulatory requirements for a professional position as set forth at 8 C.F.R. § 204.5(l)(2). See also 8 C.F.R. § 204.5(l)(3)(ii)(C). Moreover, the DOL assigned the occupational code of 160.162-018, accountant, to the proffered position. The DOL assigns such codes based on normalized occupational standards. According to the DOL public online database at <http://online.onetcenter.org/crosswalk/DOT?s=030.162-014+&g+Go> (accessed November 13, 2007), the DOL description of the position of accountant and the requirements for the position indicate that the position of accountant falls within Job Zone Four. This means that the position requires "considerable preparation." According to the DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. The DOL assigns a standard vocational preparation (SVP) range of 7 to 8 to the occupation. This means "[m]ost of

⁴ Subsequent to the priority date, the beneficiary also obtained a CPA license from the State of Wisconsin. As this was awarded after the priority date, this analysis will not take into account the prerequisites for this license which were in place in Wisconsin.

⁵ Information at the NASBA website also indicates that according to Colorado accountancy regulations and guidelines, membership in the ICAI is deemed the equivalent of a U.S. baccalaureate degree in accounting. See educational prerequisites to the AICPA Uniform CPA Examination for the State of Colorado as posted at the NASBA website, <http://www.nasba.org/nasbaweb/NASBAWeb.nsf/wpecer?openform&stateabbrev=CO> (accessed October 30, 2007).

these occupations require a four-year bachelor's degree, but some do not." See <http://online.onetcenter.org/link/summary/15-1031.00#JobZone> (accessed November 13, 2007). The DOL also states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See Id.

Thus, based on the job requirements for the position as set forth on the Form ETA 750 and a review of the standard requirements for such a position as established by the DOL, the proffered position is most properly analyzed as a professional position.

Counsel suggests on appeal that CIS should categorize the proffered position as a skilled worker position. This assertion is not persuasive. The skilled worker category requires only two years of experience, and is intended for skilled worker jobs, rather than members of the professions. See § 203(b)(3)(A)(i) of the Act; see also 8 C.F.R. § 204.5(l)(2) (where the separate visa categories: skilled worker, professional and other worker are defined.) As noted earlier, the proffered position requires much more even than the minimum required by the *professional* visa preference category. See § 203(b)(3)(A)(ii) of the Act; see also 8 C.F.R. § 204.5(l)(3)(ii)(C). Further, according to the U.S. Bureau of Labor Statistics, U.S. Department of Labor, *Occupational Outlook Handbook, 2006-2007 Edition*, Bulletin 2600, 71-72 (U.S. Government Printing Office, Washington, D.C. 2006), accountants who gain certification have achieved professional status. Passage of the AICPA Uniform CPA examination, which results in official certification as an accountant, is required for the proffered position. Accordingly, this office finds that the proffered position is a professional position.

Concerning the documentary evidence needed to support classification in the professional category, the regulation at 8 C.F.R. § 204.5(l)(3)(ii) states in relevant 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.

(C) *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. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

In the definition of *professional*, the regulation at 8 C.F.R. § 204.5(l)(2) uses a singular description of foreign equivalent degree. Thus, the regulatory language sets forth the requirement that a beneficiary must have one

degree that is deemed the foreign equivalent of a U.S. baccalaureate degree to qualify as a professional for third preference visa category purposes.

As noted above, the information available at the AACRAO EDGE website indicates that passage of the ICAI final examination and ICAI associate membership, without more, is the foreign equivalent of a U.S. bachelor's degree in accounting. The two ECE evaluations and the FIS evaluation in the record indicate the same. The article "A Review of Indian Education and The Institute of Chartered Accountants of India with Recommendations" at pages 10 through 11 specifies that one may enter the ICAI after completing the twelfth grade and continue at that institute until completion of the ICAI final examination. The beneficiary opted to enroll at that institute after completing three years of college-level study focused on accounting. As such, he placed into advanced classes at the ICAI. Nonetheless, the AACRAO EDGE credentials evaluation database, the State of Colorado regulations and guidelines governing accountancy licensing, as well as other evidence in the record discussed earlier make clear that those who pass the ICAI final examination need not combine this academic achievement with other diplomas or degrees to demonstrate that they have acquired the foreign equivalent of a U.S. bachelor's degree in accounting. Rather, the passage of the final examination at this institute, an examination which is preceded by over five years of theoretical and practical instruction for those who enroll directly following the twelfth grade, together with ICAI associate membership, without more, amount to the equivalent of a U.S. bachelor's degree in accounting. The fact that the ICAI allowed the beneficiary to place out of certain courses because he had completed several years of college-level study in accounting at the University of Delhi is not an obstacle to finding that passage of the ICAI final examination and obtaining associate membership in the ICAI is the foreign equivalent to a U.S. bachelor's degree in accounting in keeping with the definition of *professional* as set forth at 8 C.F.R. § 204.5(l)(2) and in keeping with the terms of the Form ETA 750 in this matter.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal are sufficient to overcome the basis of denial in the decision of the director. The petitioner has demonstrated that as of the priority date the beneficiary had the requisite foreign equivalent degree to the U.S. bachelor's degree in accounting, as set forth on the Form ETA 750 as certified. *See* 8 C.F.R. § 103.2(b)(1), (12). *See also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.