

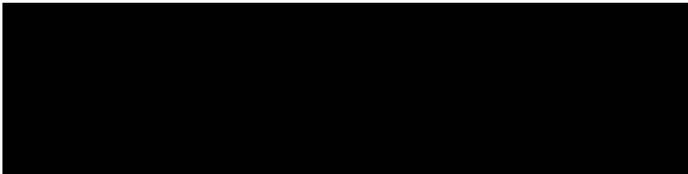
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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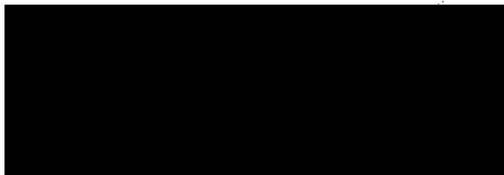
Date: DEC 26 2007

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was approved by the Director, Texas Service Center, and was certified to the Administrative Appeals Office (AAO) for review. The director's decision will be affirmed. The petition will be approved.

The petitioner is a manufacturer of diagnostic kits. It seeks to employ the beneficiary permanently in the United States as a level II controller. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the U.S. Department of Labor (DOL). The director determined that the petitioner had established that the beneficiary was qualified to perform the duties of the proffered position, in accordance with the terms of the labor certification, and approved the petition. She then certified her decision to this office for review.

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 central issue in this case is whether the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position in that she possesses a U.S. bachelor's degree or a foreign equivalent degree in Accounting or Finance in accordance with the terms of the 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), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089 as certified by the DOL and submitted with the petition. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the ETA Form 9089 was accepted on June 1, 2005.

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 AAO considers all pertinent evidence in the record, including new evidence properly submitted with the certification.¹

Relevant evidence in the record includes: a copy of a Bachelor of Commerce Degree issued to the beneficiary by South Gujarat University in 1988; a copy of the beneficiary's transcripts from that university which indicate that this degree required three years of study; a copy of a Certificate of Practice issued by the Institute of Chartered Accountants of India (ICAI) in 1998, which indicates that the beneficiary is a member of the ICAI and is entitled to practice as a Chartered Accountant; a copy of a Certificate of Membership issued by the ICAI in 1998, which also indicates that the beneficiary is a member of this institute; copies of various Statement of Marks or test scores which the beneficiary received from the ICAI, including the Statement of Marks which reflects that the beneficiary passed the ICAI final examination in May 1998; a

¹ In her decision, the director notified the petitioner of its right to submit a brief or additional evidence in support of the petition to be reviewed by the AAO along with the certification. However, the petitioner declined to submit further documentation.

copy of an evaluation of the beneficiary's academic work in accounting from Morningside Evaluations and Consulting; a copy of an evaluation of the beneficiary's academic work from Global Credential Evaluators; and, a copy of a letter from the Texas State Board of Accountancy dated March 27, 2002 which indicates that the beneficiary's application to take the Uniform CPA Examination offered by the Texas State Board had been approved and the beneficiary was eligible to take that exam within two years of the date on that letter. The record does not contain any other evidence directly relevant to the beneficiary's educational qualifications.

Regarding the ICAI, the AAO would underscore the following. 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] A., http://www.fcsa.biz/reports/FCSA_Acc_report.pdf (accessed December 10, 2007) 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. Counsel makes a similar assertion in her October 27, 2005 response to the director's notice of intent to deny. Information found in this 2003 article at pages 11 through 12 would suggest that because the instant beneficiary had already completed a three-year degree in commerce (with coursework concentrated in accounting) before entering the ICAI, she would have been required to take only an additional two and one-half to three years of theoretical and practical instruction in accounting prior to taking the ICAI final examination. *Id.* However, the ICAI final examination is preceded by over five years of theoretical and practical instruction for those who enroll directly following the twelfth grade. *Id.*

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 in the 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 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).

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the June 1, 2005 priority date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

In this case, the ETA Form 9089 at part H sets forth the minimum education, training, and experience that an applicant must have to qualify for the proffered position. Part H (4) and (7) specify that the minimum level of education required for the position is a bachelor's degree in Accounting or Finance. Part H (5) specifies that 12 months of training in configuration and maintenance of SAP R/3 Finance and Controlling or SAP R/3 Finance are also required. Part H (6) indicates that 24 months of experience in the job offered is required for the position. Part H (8) specifies that no alternate combination of education and experience is acceptable to qualify an individual for the proffered position. Part H (9) indicates that a foreign educational equivalent is acceptable to fulfill the academic requirements of the position. The duties of the proffered position are delineated at Part H (11) of the ETA Form 9089 and since this is a public record, will not be recited in this decision. Part H (14) indicates that there are no other specific skills or other requirements necessary to qualify for the proffered position.

The beneficiary set forth her credentials on the ETA Form 9089 and signed her name on August 23, 2005 under a declaration that the contents of the form are true and correct under the penalty of perjury. At Part J of the ETA Form 9089, the beneficiary indicates that she completed a bachelor's degree in accounting in 1998 at the Institute of Chartered Accountants of India (ICAI), Mumbai, India. The beneficiary did not indicate on that form that she had pursued any other formal studies relevant to the proffered position.

On September 30, 2005, the director issued a notice of intent to deny based on the petitioner's failure to establish that the beneficiary possesses a U.S. bachelor's degree in Accounting or Finance or a foreign degree equivalent.

In response, counsel asserted that the beneficiary had earned a three-year degree, followed by two years of academic work at the ICAI, the combination of which both Morningside Evaluations and Consulting and Global Credential Evaluators had judged to be the equivalent of a U.S. bachelor's degree in Accounting.² Counsel also pointed to evidence in the record that the beneficiary had built a distinguished career in the profession of accounting, and that she was qualified to work and had worked as a controller overseeing Certified Public Accountants in the U.S.

As her authority, counsel relied on two letters written by ██████████, CIS, Office of Adjudications, dated January 7, 2003 and July 23, 2003. In the letters, Mr. ██████████ interprets that part of section 203(b)(2) of the Act and its corresponding regulations which pertains to petitions filed for aliens who are members of the professions holding advanced degrees. Counsel also submitted with her response a copy of the decision *Matter of Doultsinos*, 12 I&N Dec. 153 (BIA 1967) in which the Board finds that the beneficiary, who had a four-year degree in Accounting from the Graduate Industrial School, Greece,³ and had begun graduate work in Economics at the University of Maryland, might be deemed a member of the professions under section 203(b)(3) of the Act. Counsel also relied on *Matter of Arjani*, 12 I&N Dec. 649 (BIA 1967), which holds that, in certain circumstances, a beneficiary who has not entirely completed a four year bachelor's degree, may combine education, training and a significant level of experience to equate to a bachelor's degree in Accounting, in order that such a beneficiary might be considered a member of the professions and entitled to preference classification under the Act. In addition, counsel submitted a copy of *Matter of Caron International, Inc.*, 19 I&N Dec. 791 (BIA 1988), which holds, in relevant part, that a baccalaureate degree is the minimum education required for *professional* standing.⁴

² Counsel also asserted that the Texas State Board of Public Accountancy had determined that the combination of the beneficiary's three-year degree and two years of academic work which followed to be the equivalent of a U.S. bachelor's degree in Accounting. However, there is no documentation in the record that indicates that the Texas State Board of Public Accountancy made such a determination, and the assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter Of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Thus, this assertion by counsel will not be considered further.

³ The University of Macedonia (UOM), Greece, has posted information relating to its history on the Internet at <http://www.uom.gr/index.php?newlang=eng> (accessed December 10, 2007) and <http://www.uom.gr/modules/Statikes/print.php?stid=62> (accessed December 10, 2007). The UOM's history includes the history of the Graduate School of Industrial Studies. *Id.* In May 1960, when the beneficiary in *Doultsinos* received a degree in Accounting from the Graduate School of Industrial Studies, that institute required four years of study prior to the issuance of a degree. *Id.* This office also notes that the text of *Doultsinos* confirms that the U.S. Office of Education in Washington, D.C. deemed the beneficiary's one degree from this institute to be the equivalent of a U.S. bachelor's degree in Accounting.

⁴ In *Matter of Caron International*, the Board also holds that, when the beneficiary does not have a baccalaureate degree, under certain circumstances, it is still possible for him or her to qualify for a certain nonimmigrant visa, but not for an immigrant visa in the employment-based preference category for professionals.

The director concluded that in keeping with *Matter of Arjani*, the record established that the instant beneficiary through a combination of her three year degree, her two years of study prior to becoming a member of the ICAI, various other specialized training and years of experience as an accountant had acquired the equivalent of a U.S. bachelor's degree in Accounting and otherwise met the terms of the ETA Form 9089 and approved the petition on November 1, 2005.

This office will affirm the director's decision to approve the petition, but based on different reasoning than that outlined in the director's notice of certification.

Regarding the director's reasoning, it is noted that the text of *Matter of Arjani* is silent as to the specific terms of the approved labor certification in that case. This office must assume that the Board would not have approved that petition if the terms of the labor certification made clear that the petitioner had informed U.S. workers who did not have an actual degree, but who did have a combination of work experience and coursework that might be considered an informal equivalent to a degree that they were *not eligible* to apply for the proffered position. This must be the case given that the purpose of the employment-based third preference classification is to allow employers to fill certain positions with non-U.S. workers, only when it is found that qualified U.S. workers are not available. See Section 203(b)(3)(A) of the Act. In the instant case, the terms of the ETA Form 9089 indicate that the petitioner informed any U.S. workers who had a *combination* of degrees, certificates, specialized training and/or experience that might be deemed an informal equivalent of a U.S. bachelor's degree in Accounting or Finance that they were not qualified to apply for the proffered position. See ETA Form 9089, part H (8) which indicates that U.S. workers were informed that *no* alternative combination of education and experience to the bachelor's degree or the foreign educational equivalent could qualify an individual for the proffered position. Thus, the holding in *Matter of Arjani* which allowed for a combination of academic achievements and experience, an informal equivalent to a bachelor's degree, to qualify the beneficiary for the position is not applicable to the instant case.

The AAO also finds that counsel's reliance on the letters of [REDACTED] of CIS Office of Adjudications is misplaced. In these 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). Such issues are not relevant to the facts of the present case. Also, it is noted that private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators. See *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).

Regarding the proper evaluation of the beneficiary's education, this office notes the following.

The petitioner submitted into the record an evaluation report dated June 9, 2000 by Global Credential Evaluators, Inc. (GCE) which finds that the beneficiary's 1988 Bachelor of Commerce degree from the South Gujarat University combined with her membership in the ICAI as of 1998 is equivalent to a bachelor's degree in accounting from a regionally accredited university in the United States.

An evaluation report in the record by Morningside Evaluations and Consulting (Morningside) dated February 23, 2005 concludes that the beneficiary has the equivalent of a bachelor of science degree in accounting from an accredited institution of higher education in the United States. To reach this conclusion, the Morningside evaluation relies on the beneficiary's three-year Bachelor of Commerce degree from South Gujarat University awarded in 1988 and her 1998 successful completion of the ICAI final examination and ICAI Certificate of Membership.

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."⁵ 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 regulation at 8 C.F.R. § 204.5(I)(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 Finance or the foreign equivalent degree; 12 months of training in configuration and maintenance of SAP R/3 Finance and Controlling or SAP R/3 Finance; and 24 months of experience in the proffered position. 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(I)(2). See also 8 C.F.R. § 204.5(I)(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 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.

⁵ "A Review of Indian Education and The Institute of Chartered Accountants of India with Recommendations" indicates 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.

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.

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 article "A Review of Indian Education and The Institute of Chartered Accountants of India with Recommendations" at pages 10 through 11 points out that one may enter the ICAI after completing the twelfth grade and continue at that institute until completion of the ICAI final examination. See http://www.fcsa.biz/reports/FCSA_Acc_report.pdf (accessed December 10, 2007). The beneficiary opted to enroll at that institute after completing three years of college-level study focused on accounting. As such, she placed into advanced classes at the ICAI. Nonetheless, the AACRAO EDGE credentials evaluation database makes 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 she had completed several years of college-level study in accounting at the South Gujarat University 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 ETA Form 9089 in this matter.

For the reasons discussed above, 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 ETA Form 9089 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. The director's decision in the notice of certification is affirmed.

ORDER: The petition is approved.