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U.S. Citizenship  
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Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date: JUN 16 2008

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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 Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner provides worldwide healthcare services. It seeks to employ the beneficiary permanently in the United States as a senior business systems analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a foreign equivalent degree to a U.S. baccalaureate.

On appeal, counsel submits a brief and additional evidence. As will be discussed below, counsel relies on a federal district court decision, *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 (D. Or. 2006). Contrary to counsel's assertion, however, this decision actually supports the director's conclusion that the beneficiary's combination of education and a professional membership cannot support classification as a member of the professions holding an advanced degree, the only classification before us in this matter.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The beneficiary possesses a foreign three-year Bachelor of Commerce degree and membership in the Institute of Chartered Accountants of India and the Institute of Company Secretaries of India. The beneficiary also passed the intermediate examination for the Institute of Cost and Works Accountants of India. Thus, the issue is whether that education amounts to a foreign degree equivalent to a U.S. baccalaureate degree.

The petitioner initially submitted an evaluation of the beneficiary's credentials from International Educational Equivalency Evaluation Services. The evaluation concludes that the beneficiary's three-year degree is equivalent to the "[c]ompletion of three years of full-time, postsecondary study in business administration at a regionally-accredited university." The evaluation then concludes that the U.S. equivalent of the beneficiary's membership in the Institute of Chartered Accountants of India is a "Bachelor of Science degree in Business Administration with a major in Accounting awarded by a regionally-accredited university plus completion of graduate-level study comparable to a Master's degree in Business Administration." The evaluation concludes that the beneficiary's remaining credentials are equivalent to "additional university-level study" at the graduate and undergraduate level.

In response to the director's request for additional evidence, the petitioner submitted new evaluations that contradict the initial evaluation. Specifically, the new evaluations, from [REDACTED] of Career Consulting International and [REDACTED] of Marquess Educational Consultants, both conclude that the beneficiary's three-year degree, in and of itself, is equivalent to a U.S. four-year baccalaureate. Both evaluators also conclude that the beneficiary's professional memberships are equivalent to a U.S. Master's degree.

The director, citing *Matter of Caron International*, 19 I&N Dec. 791 (Commr. 1988) and *Matter of Sea*, 19 I&N Dec. 817 (Commr. 1988), concluded that the evaluations were not persuasive. On appeal, counsel asserts that these decisions are not applicable as they relate to nonimmigrant petitions and that the decisions were misapplied because they do not allow for the summary rejection of expert opinions.

Regardless of whether *Matter of Caron International* happened to involve a nonimmigrant petition, it stands for the proposition that Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. at 795. CIS, however, is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795.

Counsel is not persuasive that the evaluations are not contradictory and, thus, must be accepted. As stated above, the evaluations are not consistent with each other regarding the equivalency of the beneficiary's three-year degree. Moreover, they are not in accord with the remainder of the record. Specifically, the petitioner relies on the beneficiary's acceptance into the Master of Business Administration (MBA) at Lake Forest Graduate School of Management. In response to the director's request for additional evidence, the petitioner submitted an acceptance letter that referenced an "Official Notification of Acceptance Status." As noted by the director, the petitioner had not submitted the official notification at the time the director denied the petition. The petitioner submits this notice on appeal. The notice indicates that a second letter of recommendation was lacking and that the letter would determine whether the beneficiary was admitted generally or provisionally. On November 10, 2004, Lake Forest advised the beneficiary that the second letter had been received and that he was "officially accepted to the graduate program." It is not entirely clear from the November 10, 2004 letter whether the beneficiary was accepted generally or provisionally, which would have required him to successfully complete two courses before taking a third.

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<sup>1</sup> [REDACTED] indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure Robert de Sorbon but does not indicate the field in which she obtained her doctorate. According to its website, [www.sorbon.fr/index1.html](http://www.sorbon.fr/index1.html), Ecole Superieure Robert de Sorbon awards degrees based on past experience.

<sup>2</sup> [REDACTED] indicates he has a "canonical diploma of Sacrae Theologiae Professor" from St. David's Oecumenical Institute of Divinity, which he equates to a Doctorate of Divinity.

Regardless, the petitioner has not explained how admission into a graduate program is evidence that the beneficiary already has a graduate degree.

Similarly, the U.S. entrance requirements for Indian degrees do not support the evaluations. For example, in response to the director's request for additional evidence, the petitioner submitted evidence from Vanderbilt's requirements for admission to its graduate programs. This information reveals that, for applicants from India: "A four-year or five-year Bachelor's degree, or both years of a two-year Master's degree following a three-year Bachelor's degree must be completed." Effective 2003, the Chartered Accountancy certification could be substituted for an *Indian* Master's degree. This information strongly suggests that, at best, Vanderbilt only considers an Indian Master's degree, and, thus, the Chartered Accountancy certification, as equivalent to a U.S. baccalaureate. While some schools appear to accept a three-year baccalaureate for graduate admission, it can be presumed that if an Indian three-year degree were truly equivalent to a U.S. four-year baccalaureate, all U.S. universities would unconditionally accept three-year degrees for admission to graduate programs without provision.

As noted above, the ETA Form 9089 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9<sup>th</sup> Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

On appeal, counsel relies on notes from a meeting between CIS and the American Immigration Lawyers Association (AILA). The AAO is bound by the Act, agency regulations, precedent decisions of the agency and published decisions from the circuit court of appeals from whatever circuit that the action arose. *See N.L.R.B. v. Ashkenazy Property Management Corp.*, 817 F.2d 74, 75 (9<sup>th</sup> Cir. 1987)(administrative agencies are not free to refuse to follow precedent in cases originating within the circuit); *R.L. Inv. Ltd. Partners v. INS*, 86 F. Supp. 2d 1014, 1022 (D. Haw. 2000), *aff'd* 273 F.3d 874 (9<sup>th</sup> Cir. 2001)(unpublished agency decisions and agency legal memoranda are not binding under the APA, even when they are published in private publications or widely circulated). Even CIS internal memoranda do not establish judicially enforceable rights. *See Loa-Herrera v. Trominski*, 231 F.3d 984, 989 (5<sup>th</sup> Cir. 2000)(An agency's internal guidelines "neither confer upon [plaintiffs] substantive rights nor provide procedures upon which [they] may rely.")

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Regl. Commr. 1977). The Joint Explanatory Statement of the Committee of Conference, published as part of the House of Representatives Conference Report on the Act, provides that "[in] considering equivalency in category 2 advanced degrees, it is anticipated that the alien must have a bachelor's degree with at least five years progressive experience in the

professions.” H.R. Conf. Rep. No. 955, 101<sup>st</sup> Cong., 2<sup>nd</sup> Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at \*6786 (October 26, 1990). At the time of enactment of the Act in 1990, it had been almost thirteen years since *Matter of Shah* was issued. Congress is presumed to have intended a four-year degree when it stated that an alien “must have a bachelor’s degree” when considering equivalency for second preference immigrant visas. We must assume that Congress was aware of the agency’s previous treatment of a “bachelor’s degree” under the Act when the new classification was enacted and did not intend to alter the agency’s interpretation of that term. *See Lorillard v. Pons*, 434 U.S. 575, 580 (1978)(Congress is presumed to be aware of administrative and judicial interpretations where it adopts a new law incorporating sections of a prior law). *See also* 56 Fed. Reg. 60897, 60900 (Nov. 29, 1991) (an alien must have at least a bachelor’s degree).

In 1991, when the final rule for 8 C.F.R. § 204.5 was published in the Federal Register, the Immigration and Naturalization Service (the Service), responded to criticism that the regulation required an alien to have a bachelor’s degree as a minimum and that the regulation did not allow for the substitution of experience for education. After reviewing section 121 of the Immigration Act of 1990, Pub. L. 101-649 (1990), and the Joint Explanatory Statement of the Committee of Conference, the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor’s degree:

The Act states that, in order to qualify under the second classification, alien members of the professions must hold “advanced degrees or their equivalent.” As the legislative history . . . indicates, the equivalent of an advanced degree is “a bachelor’s degree with at least five years progressive experience in the professions.” Because neither the Act nor its legislative history indicates that bachelor’s or advanced degrees must be United States degrees, the Service will recognize foreign equivalent degrees. But both the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor’s degree.*

56 Fed. Reg. 60897, 60900 (Nov. 29, 1991)(emphasis added).

There is no provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(2) of the Act as a member of the professions holding an advanced degree with anything less than a full baccalaureate degree. More specifically, a three-year bachelor’s degree will not be considered to be the “foreign equivalent degree” to a United States baccalaureate degree. *Matter of Shah*, 17 I&N Dec. at 245. Where the analysis of the beneficiary’s credentials relies on work experience alone or a combination of multiple lesser degrees, the result is the “equivalent” of a bachelor’s degree rather than a “foreign equivalent degree.”<sup>3</sup> In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must

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<sup>3</sup> Compare 8 C.F.R. § 214.2(h)(4)(iii)(D)(5)(defining for purposes of a nonimmigrant visa classification, the “equivalence to completion of a college degree” as including, in certain cases, a specific combination of education and experience). The regulations pertaining to the immigrant classification sought in this matter do not contain similar language.

have a single degree that is the “foreign equivalent degree” to a United States baccalaureate degree. 8 C.F.R. § 204.5(k)(2). As explained in the preamble to the final rule, persons who claim to qualify for an immigrant visa by virtue of education or experience equating to a bachelor’s degree may qualify for a visa pursuant to section 203(b)(3)(A)(i) of the Act as a skilled worker with more than two years of training and experience. 56 Fed. Reg. at 60900.

For the classification sought in this matter, advanced degree professional, the regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires the submission of an “official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree.” For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.” We cannot conclude that the evidence required to demonstrate that an alien is an advanced degree professional is any less than the evidence required to show that the alien is a professional. To do so would undermine the congressionally mandated classification scheme by allowing a lesser evidentiary standard for the more restrictive visa classification. Moreover, the commentary accompanying the proposed advanced degree professional regulation specifically states that a “baccalaureate means a bachelor’s degree received *from a college or university*, or an equivalent degree.” (Emphasis added.) 56 Fed. Reg. 30703, 30306 (July 5, 1991). Cf. 8 C.F.R. § 204.5(k)(3)(ii)(A) (relating to aliens of exceptional ability requiring the submission of “an official academic record showing that the alien has a degree, *diploma, certificate or similar award* from a college, university, school or other institution of learning relating to the area of exceptional ability”).

Counsel’s citation to *Snapnames.com* on appeal is not persuasive. In that case, as in the matter before us, the alien had a three-year baccalaureate and was a member of the Institute of Chartered Accountants of India. *Snapnames.com, Inc.*, 2006 WL 3491005 at \*1. The judge in that case found that CIS is entitled to deference in interpreting its own regulatory definition of advanced degree. *Id.* at \*11. More specifically, the judge found that CIS was entitled to interpret “a degree” in the context of a professional and advanced degree professional to exclude an individual with an Indian three-year degree followed by membership in the Institute of Chartered Accountants of India, the exact fact pattern in this matter. *Id.* at \*10-11.

Moreover, the petitioner has not established that the Institute of Chartered Accountants of India is a college or university. As discussed above, the regulations clearly and unambiguously state that a professional must have an official college or university record showing the date the baccalaureate was awarded. 8 C.F.R. § 204.5(l)(3)(ii)(C). See also 56 Fed. Reg. 30703, 30306 (July 5, 1991)(relating to members of the professions holding an advanced degree). As the beneficiary does not have a baccalaureate from a college or university, he cannot be considered a professional or a member of the professions holding an advanced degree.

Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree” from a college or university, the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act. For this reason, the petition may not be approved.



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.