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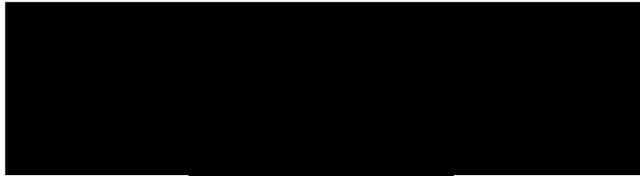
U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



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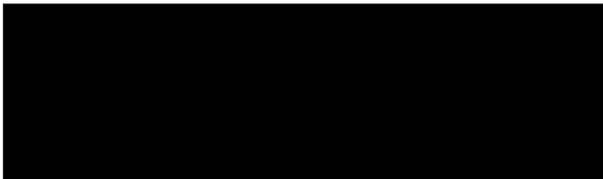


FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: OCT 28 2009
LIN 07 022 54287

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

Perry Riew
Chief, 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 an IT consulting company. It seeks to employ the beneficiary permanently in the United States as a senior software engineer pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). The petition is accompanied by a Form ETA 9089, Application for Permanent Employment Certification, certified by the Department of Labor (DOL). Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the alien employment certification. The director specifically determined that the beneficiary's three-year Bachelor of Science degree in physics from University of Bombay (Mumbai) failed to establish that he possessed a baccalaureate degree in the relevant fields of study or a foreign equivalent.¹

On appeal, counsel submitted a brief and new evidence.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. 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.

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 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

¹ Although the director referenced the beneficiary's two years of study at NIIT, he did not provide any further analysis of this educational credential in his decision. The AAO will address the beneficiary's NIIT certificate further in these proceedings. The director also referred to "evaluations" and an article submitted to the record in his decision; however, the AAO only finds the WEE evaluation and no specific article relevant to the instant petition in the initial materials submitted with the I-140 petition.

Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.²

The beneficiary³ possesses a foreign three-year bachelor's degree from the University of Mumbai and a GNIIT certificate for two years of study and one year of practical experience from the National Institute of Information Technology (NIIT). Thus, the issues are whether the beneficiary's three-year Bachelor's degree is the equivalent of a U.S. baccalaureate or whether the beneficiary's three year program of studies and his NIIT studies combined are the equivalent of a U.S. baccalaureate degree in the relevant fields of study as set forth on the labor certification..

Eligibility for the Classification Sought

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 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).

A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg'l. Comm'r. 1977). This decision involved a petition filed under 8 U.S.C. §1153(a)(3) as amended in 1976. At that time, this section provided:

Visas shall next be made available . . . to qualified immigrants who are members of the professions

The Act added section 203(b)(2)(A) of the Act, 8 U.S.C. §1153(b)(2)(A), which provides:

Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent

² 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).

³ The record reflects that the petitioner submitted a subsequent I-140 petition for the beneficiary under the skilled worker/professional classification that was approved on February 2, 2009. In the accompanying Form 9089, the minimum educational requirement was an Associate's degree.

Significantly, the statutory language used prior to *Matter of Shah*, 17 I&N Dec. at 244 is identical to the statutory language used subsequent to that decision but for the requirement that the immigrant hold an advanced degree or its equivalent. 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, 101st Cong., 2nd Sess. 1990, 1990 U.S.C.C.A.N. 6784, 1990 WL 201613 at 6786 (Oct. 26, 1990).

At the time of enactment of section 203(b)(2) 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, 580-81 (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.”⁴ In order to have experience and education equating to an advanced degree under section 203(b)(2) of the Act, the beneficiary must 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 this classification, 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”). While the beneficiary’s three years of studies in physics are from the University of Mumbai, the record contains no evidence that NIIT is a college or university

Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree,” the beneficiary does not qualify for preference visa classification under section 203(b)(2) of the Act as he does not have the minimum level of education required for the equivalent of an advanced degree.

Qualifications for the Job Offered

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the

⁴ 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.

domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F. 2d at 1309.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

Moreover, when determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

On the ETA Form 9089, Part H, Items 4 and 5-A, the petitioner indicated that a Master's degree in Computer Studies or in the related fields of Science, Physics, or Engineering, with no further training was required for the job. At Part-H, items 8 and 9, the petitioner further indicated that a

bachelor's degree or a foreign equivalent degree in the same fields with five years of work would also be acceptable.

Initially, the petitioner submitted the beneficiary's diploma for a three-year integrated course for a Bachelor of Science degree from the University of Mumbai, Maharashtra, Bombay, India in 1995, along with study transcripts for three years of studies from 1989 to 1995. The petitioner also submitted the beneficiary's GNIIT Award in Systems Management, from the National Institute of Information Technology (NIIT) awarded on September 5, 1997, copies of NIIT transcripts for Semesters I, II and III dated June 17, 1992; April 5, 1993, and March 29, 1994, respectively; along with the transcript for Semester S dated March 13, 1996.⁵ The petitioner also submitted copies of two Training Certificates issued through NIIT in 1997 and 2000,⁶ and a certificate of proficiency in Oracle DBA training for a one month course in 1999 issued by Concourse Information Technology International Limited, Mumbai, India. Finally the petitioner submitted a Certificate of Excellence signed by [REDACTED] that states the beneficiary completed requirements to be recognized as a Microsoft Certified professional holding the certification of Product Specialist.

The petitioner also submitted an educational evaluation dated June 29, 2004 from [REDACTED], [REDACTED], Worldwide Education Evaluators, Inc. (WEE), Atlanta, Georgia. Mr. [REDACTED] states that the beneficiary's diploma from the University of Mumbai is a three-year program equivalent to the completion of three years of study toward a four-year bachelor's degree in physics from a regionally accredited U.S. university, and that the beneficiary's NIIT diploma is a three year program of study with two years of classroom instruction and one year of professional practice in the field of computer science. [REDACTED] states that the NIIT studies represent the completion of an additional two years of study in computer science from an accredited U.S. technical college and when combined with the beneficiary's university studies at the University of Mumbai, the beneficiary had the equivalent of a bachelor of science in physics and computer science from an accredited U.S. technical college.⁷

On appeal, the petitioner submitted two exhibits. Exhibit One includes correspondence from various sources with regard to the equivalency of a three-year Indian bachelor's degree to a U.S. baccalaureate degree. These materials do not refer specifically to the beneficiary and his academic qualifications. Included in this exhibit is the following:

⁵ Thus, the beneficiary appears to have undertaken his undergraduate studies and his NIIT studies concurrently.

⁶ The course completed in 2000 is described as a Microsoft Certified Technical Education Center course in Implementing a Database on Microsoft SQL Server 7.0. The 1997 certificate was for a two week course in Developing Applications with Powerbuilder 5.0.

⁷ The director also referred to "evaluations" and an article submitted to the record in his decision; however, the AAO only finds the WEE evaluation and no specific article relevant to the instant petition in the initial materials submitted with the I-140 petition.

A two-page Credential Evaluation Report on World Education Services (WES) letterhead for an unidentified individual born in 1944. This document has a copyright mark for Career Consulting International at the bottom of the page. The document states that a three year Bachelor of Arts degree from India as equivalent to a U.S. bachelor's degree. There is no explanation on this document as to how the evaluator reached this equivalency;

A three page document from Foreign Consultants, Inc. Northbrook Illinois, dated June 7, 2005 written by [REDACTED] [REDACTED] examines the academic credentials of an unidentified beneficiary who completed a bachelor of science in computer science in India. [REDACTED] examines the beneficiary's academic record for sixteen subjects in terms of U.S. credit hours and states the applicant had the equivalent of 128 semester credit hours. [REDACTED] refers to a December 16, 1983 UNESCO document entitled "Regional Convention on the Recognition of Studies, Diplomas and Degrees in Higher Education in Asia and the Pacific" as the basis for her equivalency statement;

A letter written to [REDACTED] Career Consulting International, by [REDACTED] Education Consultants and Evaluators International (ECE International), Miami, Florida. [REDACTED] states the three-year degree from India is equivalent to a U.S. bachelor's degree, noting that the three-year degree from India requires at least as many contact hours as the U.S. bachelor's degree and is identical to either an accelerated three-year U.S. program or to a situation in which a student takes extra classes each semester and graduates in three years. [REDACTED] also states that he bases his comments on a UNESCO treaty that is very "clear about functional equivalency maintaining that if a degree can be used for a purpose in one country, that [it] should apply in the U.S." [REDACTED] also states that three-year degrees from Israel, Canada, the UK and other European countries via the Bologna process are routinely accepted as equivalent in the United States by universities and government agencies, while Indian three-year degrees meet with resistance;

[REDACTED] of a second letter to [REDACTED] dated March 11, 2006 from [REDACTED] B.E.S. Sant Gadge Maharaj College, Mumbai, India. [REDACTED] states that "undoubtedly the three-year degree programs in India especially in Mumbai universities "exceed the 1800 contact hours on par with the contact hours required by U.S. universities for a bachelor's degree leading to a B.A., B.Com & B.Sc. Each credit represents 15 contact /classroom hours;"

A statement from [REDACTED] The New College, Chennai, India. [REDACTED] notes that an individual identified as a student of the Bachelor of Commerce course during the academic years 1987 to 1990 had to attend 180 lecture hours per subject, thus achieving 2700 hours for all the fifteen subjects during the period of time according to the norms of the University of Madras; and

Copies of two letters from [REDACTED] Mumbai, India dated June 25, 2006 and October 26, 2006. Both letters are addressed to [REDACTED]. In these letters, the writer identifies himself as a Professor of Physics at Mumbai University for five years who later

worked for All India Radio. [REDACTED] states in one letter that every three-year bachelor's degree program in India has more than 2000 contact hours with some having more than 3000 hours, and that each Indian three-year bachelor's degree is equivalent to more than the 120 credit hours required for a U.S. bachelor's degree. He also states that in Indian universities, one examination mark represents between 1.2 and 2.0 clock hours of instruction with the majority representing between 1.2 and 1.5 clock hours. Based on this scale, [REDACTED] states that most Indian three-year bachelor's degrees represent between 120 and 135 credit hours.

In the second exhibit, counsel submits the following documents:

An excerpt from a Council of Graduate Schools (CGS) review article that states what the organization says in its Handbook with regard to applicants for graduate school standing that have three year degrees. The article also suggests Handbook wording changes with regard to this topic. The suggested wording states "Exceptions on standard accreditation *may* (emphasis in original) be granted for international applicants only, including applicants with three-year bachelor's degrees from European countries."

A report entitled "Findings From 2005 CGS International Graduate Admissions Survey III: Admissions and Enrollment" written by [REDACTED] of Research and Policy Analysis. The report on its cover states that it contains a revised and enhanced section on the three-year degree, the Bologna Process, and U.S. graduate admissions; however, the excerpt found in the record does not reference three-year degrees, but rather talks about the increase in graduate school applications in the U.S. by foreign students;

An Internet excerpt from the U.S. Department of State website dated November 6, 2006. This article is titled "U.S. Graduate Schools' Stance on European Three-Year Degrees Changing" with a subtitle "Survey says three-year European bachelor's degree increasingly 'not an issue' for schools."

A copy of a letter written by [REDACTED], dated May 17, 2007. [REDACTED] refers to an expert opinion letter prepared by [REDACTED] Medgar Evers College of the City of New York.⁸ [REDACTED] letter refers to whether NIIT has a system of accreditation or affiliation to a university. [REDACTED] notes that in 2002, NIIT established a post-secondary degree-granting affiliation with ITT Educational Services, Inc., in the United States. [REDACTED] states that the academic reputation of ITT Educational Services, Inc. is deserving of the same consideration extended to a former wholly owned subsidiary, ITT Technical Institute. [REDACTED] states that this group was founded in 1946 as Educational Services Inc. which presently maintains post-secondary accreditation in the United States by the Accrediting Council for Independent Colleges and Schools.(ACICS).

⁸ This expert opinion letter is not found in the record. [REDACTED] letter refers to another person, not to the beneficiary. Thus, [REDACTED] expert opinion does not refer to the beneficiary either.

Based on the ITT Technical Institute's ongoing accreditation and NIIT's affiliation with ITT Educational Service, [REDACTED] asks that the advanced post-secondary program completed by an unidentified individual at NIIT be recognized with the same level of consideration afforded to all other accredited post-secondary U.S. institutions.

This letter is accompanied by an Internet article from *The Tribute*, Chandigarh, India, that discusses the academic relationship between NITT and ITT Educational Services, Inc. The article states that the ITT/ESI program will offer its four-year bachelor's degree in information technology with specialization in Information Systems Security (BSISS) to NIIT students in India. The article further states that the alliances between the two groups would allow NIIT's past, present and prospective students to transfer their DNIIT program credits and secure direct admission into the third year of the four-year U.S. accredited degree program;

A Wikipedia excerpt on the ITT Technical Institute, identified as a private, for-profit technical institute located in over 30 states in the United States;

A Wikipedia excerpt on the Accrediting Council for Independent Colleges and Schools; and

A compilation of information from the NIIT Academy website⁹ that examines advance standing available to NIIT career students through alliances with five universities outside of India. This excerpt notes that the amount of advance standing given to NIIT student varies between five universities and the universities reserve the right of deciding the extent of advance standing on a case to case basis.

On appeal, counsel states that the issues are whether the education obtained by the beneficiary from the combined NIIT diploma with the three-year Bachelor of Science degree is equal to a four-year Bachelor of Science degree from a U.S. accredited institution and whether the three-year bachelor of Science degree from India is equivalent to a four-year U.S. bachelor of Science degree. Counsel asserts that both issues can be answered affirmatively in the instant petition based on the facts, expert opinion, and the global trend towards a common standard of education. Counsel notes that a qualified credential evaluator determined that the beneficiary had the U.S. equivalent of a Bachelor of Science degree in physics with a second major in computer science and that the petition's approval could be based on this evaluation.

Counsel references Exhibit One and states that the reports for most of the major evaluation agencies reached the conclusion that a three-year degree from some countries including India would be the equivalent of a U.S. four-year degree. Counsel states that in fact a majority of U.S. universities do accept a three-year degree as equivalent to a U.S. four-year degree and refers to the CGS survey report. Counsel also refers to a report by [REDACTED] of the City University of New York

⁹ See <http://niitacademy.net>. (available as of October 2, 2009.) The website is for NIIT alumni, and explains ongoing alliances with universities outside of India that give academic credit for NIIT coursework. The website describes the NIIT program as a "non-degree" program.

that examines the question of whether the NIIT education combined with a three year degree is equivalent to a U.S. bachelor's degree.¹⁰

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm'r. 1988). However, USCIS 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; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. USCIS 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; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm'r. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l. Comm'r. 1972)).

The WEE evaluation does not state that the beneficiary's three-year degree is the equivalent of a U.S. four-year baccalaureate but rather the beneficiary's three years of studies is equivalent to the completion of three years of study toward a four-year bachelor's degree in physics. The evaluator uses the combination of the beneficiary's three years of university level studies with his GNIIT certificate to find that the beneficiary has the equivalent of a four-year U.S. bachelor of science in physics and computer sciences from an accredited technical college. Thus the only evaluation report in the record that directly pertains to the beneficiary does not state that the beneficiary's three year degree is the equivalent of a U.S. four-year baccalaureate degree. On appeal, counsel makes this assertion.

On appeal, several letter writers refer to how credit hours are calculated in the Indian university system. The record fails to provide peer-reviewed material confirming that assigning credits by lecture hour is applicable to the Indian tertiary education system. For example, if the ratio of classroom and outside study in the Indian system is different than the U.S. system, which presumes two hours of individual study time for each classroom hour, applying the U.S. credit system to Indian classroom hours would be meaningless. [REDACTED], The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise" at 12, available at http://handouts.aacrao.org/am07/finished/F0345p_M_Donahue.pdf, accessed October 2, 2009 and incorporated into the record of proceedings, provides that the Indian system is not based on credits, but is exam based. *Id.* at 11. Thus, transfer credits from India are derived from the number of exams. *Id.* at 12. Specifically, this publication states that, in India, six exams at year's end multiplied by five equals 30 hours. *Id.*

The AAO finds the views of the other letterwriters submitted to the record on appeal to be irrelevant to the instant petition.¹¹ First, the evaluations address the academic qualifications of other individuals. Second, while the letter writers describe varying amounts of credit or semester hours for

¹⁰ The AAO does not find any such report although the letter from [REDACTED] Trustforte Corporation, refers to it.

¹¹ The other evaluation reports are also inconsistent with each other, and only provide support for a course by course analysis of university-level credit.

three year Indian degrees. [REDACTED] evaluation does not address the question of credit or semester hours for the beneficiary's three years of university-level studies. Thus the other evaluation reports while not addressing the beneficiary's academic studies also add no further clarification or support of the WEE evaluation. The AAO gives no weight to the additional evaluation reports submitted to the record on appeal, and will not discuss them further in these proceedings.

We reviewed the Electronic Database for Global Education (EDGE) created by AACRAO. AACRAO, according to its website, 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." AACRAO, <http://www.aacrao.org/about/> (accessed September 29, 2009) (copy incorporated into the record of proceeding). 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." *Id.* According to the login page, EDGE is "a web-based resource for the evaluation of foreign educational credentials" that is continually updated and revised by staff and members of AACRAO. [REDACTED] of International Education Services, "AACRAO EDGE Login," <http://aacraoedge.aacrao.org/index.php> (accessed September 29, 2009).

In the section related to the Indian educational system, EDGE provides a great deal of information about the educational system in India, and while it confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate.

EDGE discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

We also reviewed PIER publications that do refer to the placement of Indian students in U.S. institutions. We note that a 1997 publication incorporates the first degree and education degree

placements set forth in the 1986 publication. The *P.I.E.R World Education Series India: A Special Report on the Higher Education System and Guide to the Academic Placement of Students in Educational Institutions in the United States* at 43. As with EDGE, these publications represent conclusions vetted by a team of experts rather than the opinion of an individual.

One of the PIER publications also reveals that a year-for-year analysis is an accurate way to evaluate Indian post-secondary education. The 1986 *A P.I.E.R. Workshop Report on South Asia* at 180 explicitly states that “transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year.” The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate “may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis.” The AAO also notes that the CSF excerpt submitted to the record does not suggest that all three-year degrees would be accepted for entrance into graduate study in the United States, but only states that such credentials “may” be utilized.

Moreover, we did not obtain an evaluation from EDGE or AACRAO and rely on that evaluation to the exclusion of the evaluation provided. Rather, we reviewed the placement recommendations published by AACRAO in various publications and on EDGE. Counsel also refers to a UNESCO convention that refers to foreign credentials being accepted by different countries, but does not submit this publication to the record.. UNESCO’s more recent publication, “The Handbook on Diplomas, Degrees and Other Certificates in Higher Education in Asia and the Pacific” 82 (2d ed. 2004) (accessed on February 26, 2009 at <http://unesdoc.unesco.org/images/0013/001388/138853E.pdf>) provides:

Most of the universities and the institutions recognized by the UGC or by other authorized public agencies in India, are members of the Association of Commonwealth Universities. Besides, India is party to a few UNESCO conventions and there also exist a few bilateral agreements, protocols and conventions between India and a few countries on the recognition of degrees and diplomas awarded by the Indian universities. But many foreign universities adopt their own approach in finding out the equivalence of Indian degrees and diplomas and their recognition, just as Indian universities do in the case of foreign degrees and diplomas. The Association of Indian Universities plays an important role in this. *There are no agreements that necessarily bind India and other governments/universities to recognize, en masse, all the degrees/diplomas of all the universities either on a mutual basis or on a multilateral basis.* Of late, many foreign universities and institutions are entering into the higher education arena in the country. Methods of recognition of such institutions and the courses offered by them are under serious consideration of the government of India. UGC, AICTE and AIU are developing criteria and mechanisms regarding the same.

(Emphasis added.)

The petitioner has not rebutted the AACRAO placement recommendations with published, peer-reviewed placement recommendations that reach a different conclusion or approach to evaluating Indian degrees specifically.

We reiterate that *A P.I.E.R. Workshop Report on South Asia* at I80, explicitly states that “transfer credits should be considered on a year-by-year basis starting with post-Grade 12 year.” The chart that follows states that 12 years of primary and secondary education followed by a three-year baccalaureate “may be considered for undergraduate admission with possible advanced standing up to three years (0-90 semester credits) to be determined through a course to course analysis.” Nothing provided by the petitioner contradicts this information.

The AAO also accessed NIIT's website to determine what type of educational services it provides. NIIT collaborates with India's government educational system from kindergarten through post-graduate levels. No admission requirements are posted on the website but it does reflect that it provides online courses to colleges and develops college graduates' technical skills to prime them for better employment positions. Thus, it appears that NIIT does not require a college degree in order to admit a student. In the instant matter, there is no evidence that the beneficiary's admission to NIIT was predicated upon the completion of a bachelor's degree program. In fact, some of the beneficiary's NIIT studies were undertaken concurrently with his studies for a three-year degree in Physics.

According to a NIIT website,¹² “the GNIIT program is designed to be pursued along with graduation. The minimum qualification for enrolment to this program is successful completion of Class XII.”

In the instant matter, the record does not indicate that the beneficiary completed the NIIT and GNIIT studies in an accelerated mode, but rather took the courses and practical experience over three years, concurrently at times with his post secondary studies. Thus, while the beneficiary may have undertaken additional coursework in a relevant field, the petitioner has not established that the beneficiary's further studies would constitute a fourth year of upper level baccalaureate studies, and thus warrant describing the beneficiary's three-year baccalaureate degree and additional studies at NIIT as the equivalent of a four-year baccalaureate degree in computer science, computer information systems, engineering or a related field.

The AAO does not view the combination of the beneficiary's three-year program in physics with his GNIIT studies to be the equivalent of either a baccalaureate degree or evidence that the beneficiary possesses a master's degree in a relevant field. Further the AAO does not view the beneficiary's three year program in physics at the University of Mumbai as the equivalent of a four year U.S. baccalaureate degree in physics, one of the related fields listed on the Form ETA 9089.

The beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree,” and, thus, does not qualify for preference visa classification under section 203(b)(2) of the Act. In addition, the beneficiary does not meet the job requirements on the labor certification. For these

¹²See [http://Niiit.com/services/ITEducationfor Individuals/CareerCourses](http://Niiit.com/services/ITEducationfor%20Individuals/CareerCourses) (in section on India). (Available as of October 2, 2009.)

reasons, considered both in sum and as separate grounds for denial, 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.