

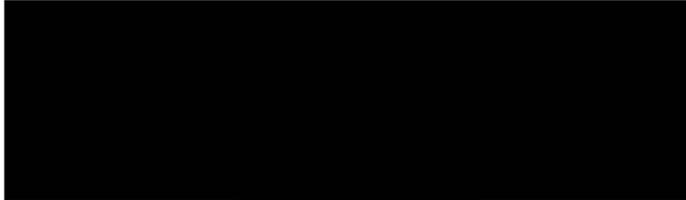
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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
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Services

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FILE: [REDACTED] OFFICE: NEBRASKA SERVICE CENTER Date: **JAN 21 2010**
SRC 06 800 20262

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:
[REDACTED]

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 Rhew
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 claims to be a software development business. It seeks to permanently employ the beneficiary in the United States as a computer systems analyst. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

As set forth in the director's September 17, 2008 denial and December 17, 2008 affirmation of the denial following the petitioner's motion to reopen and reconsider, the primary issues on appeal are whether the beneficiary possesses a foreign equivalent degree to a U.S. baccalaureate, and whether the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification.

The record shows that the appeal is properly filed, 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.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b); *see also Janka v. U.S. Dept. of Transp.*, 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 upon appeal.²

The priority date of the instant petition is November 21, 2005, the date the labor certification was filed with the DOL. *See* 8 C.F.R. § 204.5(d). On the petition, the petitioner claimed to have been established in 1996, to have a gross annual income of approximately \$45 million, and to employ 170 workers. The proffered wage stated on the labor certification is \$35.00 per hour (\$72,800.00 per year).

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

¹There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

²The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, which are incorporated into the regulations by 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).

the United States. In order to classify the beneficiary in this employment-based preference category, the petitioner must establish that the beneficiary is an advanced degree professional,³ and the beneficiary meets the requirements of the job offered as set forth in the labor certification.⁴

The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as follows:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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.

The beneficiary possesses a three-year diploma in electronics & communications engineering from SV Government Polytechnic Tirupati, and is an Associate Member of the Institution of Electronics and Telecommunications Engineers (IETE) following passage of the institution's AMIETE examination.

The record contains the following evaluations of the beneficiary's credentials:

- [REDACTED] of IndoUS Technology & Educational Services Inc. states that the beneficiary's three-year baccalaureate is equivalent to three years of study towards a U.S. bachelor's degree, and concludes that the combination of the beneficiary's three-year degree, three years of work experience, and AMIETE membership is equivalent to a U.S. baccalaureate in computer information systems. It is noted that the Reddy evaluation equates three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. See 8 CFR § 214.2(h)(4)(iii)(D)(5).
- [REDACTED] of Career Consulting International states that the IETE is an "accredited institution of higher learning in India" and that the AMIETE diploma is, by itself,

³8 C.F.R. § 204.5(k)(3).

⁴8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

[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, Ecole Superieure Robert de Sorbon awards degrees based on past experience. [REDACTED] is also states that she is a professor at European-American College (UK), where she oversees standards for granting college credit based on past experience. [REDACTED] states that she is a member of the American Evaluation Association (AEA), the Association of International Educators, and the European Association for International Education (EAIE). The record does not indicate what these organizations require for membership, and their websites do not indicate that anything other than the payment of dues for membership is required. For example, the bylaws for the

equivalent to a U.S. bachelor's of engineering degree with a major in electronic engineering from a regionally accredited college or university in the U.S. [REDACTED] provides no support for her statement that IETE is an accredited institution of higher learning.

- [REDACTED] of Marquess Educational Consultants, Ltd. (UK) states that the beneficiary's AMIETE diploma is equivalent to 136 semester credit hours in the U.S. education system, and concludes that the AMIETE diploma is equivalent to a bachelor of engineering degree with a major in electronic engineering from a regionally accredited college or university in the U.S.

Neither counsel nor the submitted evaluations claim that the beneficiary's three-year diploma is a foreign equivalent degree to a U.S. baccalaureate. Instead, at issue is whether the beneficiary's AMIETE fellowship is a foreign equivalent degree as required by 8 C.F.R. § 204.5(k)(2).

For the requested classification of 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*."⁶ (Emphasis added.) 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).

According to its website, IETE is a professional society.⁷ While IETE may offer courses and examinations, there is no evidence that IETE is a college or university or that membership is a "degree." See *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 *11 (D. Ore. Nov. 30, 2006) (finding USCIS was justified in concluding that membership in the Institute of Chartered Accountants of India was not a college or university "degree" for purposes of classification as a member of the professions holding an advanced degree).

In summary, although the petitioner has submitted evaluations stating that the beneficiary's AMIETE fellowship is equivalent to a four-year U.S. bachelor's degree, the petitioner has not

AEA at <http://www.eval.org/aboutus/bylaws.asp> (accessed on August 24, 2009), states: "Any individual interested in the purposes of the Association shall be eligible for membership. Members are defined as those who have completed an application form, received acknowledgment of membership from the Association, and paid the currently stipulated membership dues." Membership in organizations that only require the payment of dues does not confer any expertise.

⁶For 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.

⁷<http://www.iete.org/theiete.htm> (accessed December 9, 2009).

established that it is a "foreign equivalent degree" as required by 8 C.F.R. § 204.5(k)(2). IETE is a professional engineering organization, not a college or university. 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.

The director also concluded that the beneficiary is not qualified for the offered position. In evaluating the beneficiary's qualifications, U.S. Citizenship and Immigration Services (USCIS) must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Iwine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coorney*, 661 F.2d 1 (1st Cir. 1981). To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. at 159; *see also Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

In the instant case, the submitted labor certification states that the offered position requires an individual with a master's degree in computer science, information systems or an equivalent field, and 24 months of experience in the job offered; or, in the alternative, a bachelor's degree and five years of experience. The labor certification explicitly states that the offered position requires a master's or bachelor's degree. The petitioner has not established that an individual could qualify for the offered position with anything other than a master's or four-year bachelor's degree (such as, in the instant case, membership or fellowship in a professional society that may be equivalent to a four-year U.S. bachelor's degree). Accordingly, the petitioner has not established that the beneficiary meets the minimum qualifications of the proffered position, and the petition will also be denied for this reason.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial.

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.