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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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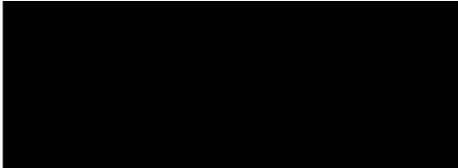
Office: NEBRASKA SERVICE CENTER

Date: **JAN 21 2010**

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 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 provide data processing services. It seeks to permanently employ the beneficiary in the United States as a "senior financial services database applications engineer/architect." 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 a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

As set forth in the director's July 7, 2008 denial, the primary issue on appeal is whether the beneficiary possesses a foreign equivalent degree to a U.S. baccalaureate.

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 instant petition is April 1, 2004, 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 1963, to have a gross annual income of approximately \$58 million, and to employ 235 workers. The proffered wage stated on the labor certification is \$74,412.00 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 the United States. In order to classify the beneficiary in this employment-based preference category, the

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).

petitioner must establish that the beneficiary is an advanced degree professional. 8 C.F.R. § 204.5(k)(3).

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 bachelor of science degree from the University of Deli, India, and is a fellow of the Institute of Chartered Accountants of India (ICAI).

The petitioner submitted an evaluation of the beneficiary's credentials with the petition prepared by [REDACTED] of The Foundation for International Services, Inc. [REDACTED] states that the beneficiary's three-year baccalaureate is equivalent to three years of post-secondary education towards a U.S. bachelor's degree. [REDACTED] concludes that the petitioner is an ICAI fellow, which is equivalent to a bachelor's degree in accounting from a regionally accredited college or university in the United States.

The director issued a Notice of Intent to Deny (NOID) the petition, stating that the beneficiary's ICAI fellowship constitutes membership in a professional organization, but is not equivalent to a U.S. bachelor's degree. In response to the NOID, the petitioner submitted the following additional evaluations of the beneficiary's academic credentials:

- [REDACTED] of The Trustforte Corporation 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 and ICAI fellowship is equivalent to a U.S. baccalaureate in accounting.
- [REDACTED] of e-ValReports states that the combination of the beneficiary's three-year baccalaureate and ICAI fellowship is equivalent to a U.S. baccalaureate in accounting, and that the beneficiary's ICAI Certificate of Practice is equivalent to certification as a public accountant in the United States.
- Response memorandum of [REDACTED] of The Foundation for International Services, Inc., confirming and elaborating on her initial evaluation.

Following the director's denial of the petition, counsel submits the following additional evidence on appeal:

- Evaluation of the beneficiary's credentials, prepared by [REDACTED] and [REDACTED] of [REDACTED] for the Washington Board of Accountancy. The evaluation states that the beneficiary's three-year baccalaureate is equivalent to three years of post-secondary education towards a U.S. bachelor's degree. The evaluation further states that the

beneficiary's ICAI fellowship is equivalent to an additional 61.75 undergraduate semester credit hours, and concludes that the combination of the beneficiary's three-year baccalaureate degree and ICAI fellowship is equivalent to a U.S. bachelor's of business administration in accounting.

- Report from the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), stating that the beneficiary's passage of the ICAI final examination and association membership "represents attainment of a level of education comparable to a bachelor's degree in the United States."

Counsel does not claim that the beneficiary's three year degree is a foreign equivalent degree to a U.S. baccalaureate. Instead, at issue is whether the beneficiary's ICAI fellowship is a foreign equivalent degree to a U.S. baccalaureate.

As is explained below, the beneficiary's ICAI fellowship is equivalent to a U.S. bachelor's degree, however, it is not 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*."³ (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).

While ICAI may offer courses and examinations, there is no evidence that ICAI 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 ICAI membership was not a college or university "degree" for purposes of classification as 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 as he does not have the minimum level of education required for the equivalent of an advanced degree.

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.

³For 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.

ORDER: The appeal is dismissed.