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U.S. Citizenship
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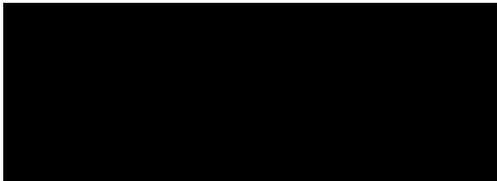
Office: LINCOLN SERVICE CENTER

Date:

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

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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Lincoln Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a developer of specialty software in the workers compensation field. It seeks to employ the beneficiary permanently in the United States as a systems analyst. As required by statute, a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the requisite experience as stated on the labor certification petition and denied the petition accordingly.

On appeal, counsel submits a brief and no additional evidence.

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 unavailable in the United States.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

8 CFR § 204.5(l)(3)(ii) states, in pertinent 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.
- (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.
- (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.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes. The Form ETA 750 requires a bachelor degree and four (4) years of education. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

In the instant case, the petition seeks to qualify the beneficiary for preference classification as a professional. Accordingly, eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary is a member of the professions, and had the qualifications stated on its Form ETA. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on February 9, 2002. The labor certification application states that the position requires two years experience, a four-year bachelor's degree in computer science, computer programming or engineering or a related field and a demonstrated proficiency in various computer system languages along with a working knowledge of the insurance industry's software and database requirements.

With the petition counsel submitted:

- A Form G-28;
- A certified ETA 750A application for labor certification;
- The petitioner's letter in support of the petition;
- A credentials evaluation for the beneficiary;
- Copies of the beneficiary's diplomas and college transcripts; and
- Letters from prior employers verifying the beneficiary's experience.

On November 12, 2003, the director denied the petition without first issuing a request for more evidence (RFE) on the beneficiary's education. The director found that the evidence did not establish that the beneficiary possessed the requisite four-year baccalaureate degree in a computer-related area of study. Specifically, the director stated:

As stated above, the ETA-750 requires¹ that the beneficiary have either a 'Bachelor's degree or equivalent.' By 'equivalent', this Service understands that to mean a foreign equivalent degree, that is, a degree that is awarded for completing a course of study at a higher learning institution outside the United States that is similar to a course of study at a higher learning institution inside the United States. A baccalaureate degree is generally found to require four years of education. See *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

On appeal, counsel asserts that the director erred by refusing to treat the beneficiary's two bachelor's degrees from different Indian colleges or universities as equivalent to a four-year bachelor's in computers from a U.S. college or university. She asserts that the beneficiary "has six years of university level education and two bachelor's degrees from India, which have been found to be the equivalent of a four-year degree, Bachelor of Science in Computer Science from a regionally accredited university in the United States."

According to the certified labor certification application, the beneficiary attended the Board of Intermediate Education, Hyderabad, Andhra Pradesh, from 1981 to 1983, studying economics and commerce; from 1985 to 1987 he completed a part-time bachelor's degree in economics, political science and public administration

¹ This office notes that nowhere in the labor certification application does the term "a Bachelor degree or equivalent" appear. To the contrary, the petitioner has filled the blank calling for the college degree required with a single word, "Bachelor".

from Osmania University on the same campus; from 1984 to 1988 he completed a diploma course in mechanical engineering; and from 1993 to 1995, he completed a bachelor's degree in computer applications from an engineering college on the same campus. He also received a certificate in computer language in June 2000 from a Canadian technical institute.

Contrary to counsel's assertions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), cited above, uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

Additionally, Citizenship and Immigration Services (CIS) must look to the job offer portion of the labor certification to determine what is required to qualify 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, *Mandany 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). Evidence of a baccalaureate degree shall be in the form an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. See 8 C.F.R. § 204.5(l)(3)(2)(C). A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

According to the petitioner's credentials evaluator, the beneficiary has two three-year Indian bachelor's degrees, one in mechanical engineering granted in March 1988, and the other from the "Faculty of Arts," for which he passed an exam held in September 1987. The evaluator concludes that the beneficiary's degrees are the equivalent to a Bachelor of Arts or Bachelor of Science in computer programming from a regionally accredited U.S. university. CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). Under its reading of U.S. immigration laws and regulations, this office evaluates whether a single foreign degree is equivalent to a U.S. bachelor's degree; it does not consider two or more foreign degrees combined to be the equivalent of a single foreign degree.

This office notes that a foreign three-year bachelor's degree is not a "foreign equivalent degree" to a United States bachelor's degree. A United States bachelor's degree generally requires four years of education. *Matter of Shah*, 17, I&N Dec. 244 (Reg. Comm. 1977). According to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. After 12 years of primary and upper primary school, a bachelor's degree in the arts, commerce, or the sciences may be earned after just three years of higher education. A bachelor's degree in a professional field of study such as agriculture, dentistry, engineering, pharmacy, technology, or veterinary science generally requires four years of higher education.² If supported by a proper credentials evaluation, a four-year bachelor's degree from India might reasonably be deemed to be the "foreign equivalent degree" to a United States bachelor's degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States bachelor's degree because the degree did not require four years of study. *Matter of Shah* at 245. Based on the same reasoning, the beneficiary's three-year bachelor's degree in mechanical engineering from the State Board of Technical Education & Training Hyderabad, Andhra Pradesh, India, will not be considered the "foreign equivalent degree" to a United States bachelor's degree for purposes of this preference visa petition.

² See generally Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework – Degree Structure*, <http://www.education.nic.in/html/web/higedu.htm>.



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The evidence submitted does not demonstrate credibly that the beneficiary has the requisite two years of experience. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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.