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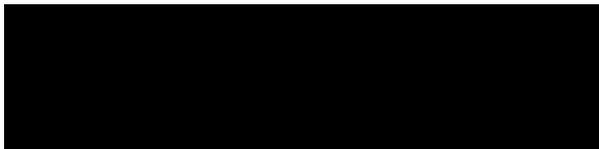
FILE: LIN 04 024 51188 Office: NEBRASKA SERVICE CENTER Date: NOV 07 2005

IN RE: Petitioner:
Beneficiary:



PETITION: 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software-consulting firm. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary had a four-year bachelor's or equivalent degree, as required on the Form ETA 750, and denied the petition accordingly.

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 or seasonal nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 28, 2003.

The Form ETA 750 states that the position of programmer analyst requires a four-year "bachelor or equivalent*"degree in Commerce, the asterisk (*) indicating the "equivalent" would be in Mathematics or Accounting. The ETA 750 also required at least one year of job experience as a programmer analyst or software consultant, which it listed as a related occupation.

On the Form ETA 750B, signed by the beneficiary on January 27, 2003, the beneficiary claimed to have begun working for the petitioner in August 2002.

The I-140 petition was submitted on November 3, 2003. On the petition, the petitioner claimed to have been established in November 1988, to currently have 700 employees, to have a gross annual income of \$144 million but did not state the petitioner's net annual income.

In support of the petition, the petitioner submitted:

- Counsel's Form G-28;
- An original certified ETA 750;
- The beneficiary's resume;
- The petitioner's financial information;
- Copies of the beneficiary's bachelor's degree certificate and his certificate of completion from the Institute of Management and Labour Studies; and,
- A November 18, 2002 Global Credential Evaluators, Inc., report on the beneficiary's education,¹ with an attachment comparing the number of schooling it takes to complete a long list of degrees in India.²

¹ The evaluation concluded the beneficiary's undergraduate coursework in India was equivalent to three-years of study at a U.S. institution of higher learning. It further states the postgraduate program "is not recognized as academic course work."

In a decision dated May 17, 2004, the director denied the petition. The director noted that the November 18, 2002 credentials evaluation had found the beneficiary's three-year bachelor's diploma and two-year certificate of completion to be the equivalent of the specified four-year bachelor's in Commerce.³ Regardless, the director then found that the Form ETA 750 "makes no provision for the acceptance of other than [a four-year bachelor's in Commerce], and in particular "did not state that a combination of education equivalent to a bachelor's degree would be acceptable."

On appeal, counsel submits a brief and additional evidence, including a December 3, 1999 credential evaluation by The Trustforte Corporation.⁴ At the same time counsel filed a request for an oral argument before the AAO.

The regulations provide that the requesting party must explain in writing why oral argument is necessary. Furthermore, CIS has the sole authority to grant or deny a request for oral argument and will grant argument only in cases involving unusual factors or issues of law that cannot be adequately addressed in writing. See 8 C.F.R. § 103.3(b). In this instance, counsel identified no unusual factors or issues of law to be resolved. In fact, counsel set forth no specific reasons why oral argument should be held. Moreover, the written record of proceedings fully represents the facts and issues in this matter. Consequently, the request for oral argument is denied.

Counsel states on appeal that the beneficiary's coursework was the equivalent of a Bachelor of Business Administration Degree in Management Information Systems from an accredited institution of higher learning in the United States. The Trustforte evaluation concluded that the beneficiary's coursework would be the equivalent of three years of study toward a Bachelor of business Administration Degree from a U.S. college or university. The evaluation concluded, however, that the beneficiary's completion of a two-year program at Xavier Labor Relations Institute, in Bihar, India,⁵ when coupled with his undergraduate education, added up to "substantially similar requirements" to a Bachelor of Business Administration in Management Information Systems from a U.S. college or university.

The evidence pertaining to the beneficiary's qualifications consists of:

- The credential evaluations dated December 3, 1999, and November 18, 2002, with attachment comparing years of study required for various degrees in India;
- Degree diploma and certificate of completion; and,
- Transcript of grades from the two educational institutions the beneficiary attended.

The issue is whether the beneficiary met all of the requirements stated by the petitioner in block 14 of the labor certification as of the day it was filed with the Department of Labor. Those requirements include producing a four-year bachelor's degree in Commerce "or equivalent*" in Mathematics or Accounting. The Service may not

² It states that in India, a Bachelor of Commerce takes three years of college, a Bachelor of Technology requires four years; a postgraduate diploma in business administration requires one to three years beyond a three-year bachelor's, and a master's requires two years beyond a three-year or four-year bachelor's degree.

³ The evaluation, referring to the institution from which the beneficiary received his postgraduate diploma in personnel management and industrial relations, stated: "Xlri [Xavier Labor Relations Institute] Jamshedpur is not recognized by the Indian Grants Commission or the Association of Indian Universities."

⁴ The record of proceeding does not explain the delay in filing this earlier evaluation, which the petitioner could have filed with an earlier nonimmigrant worker visa (H-1B) petition that CIS approved on October 10, 2002.

⁵ The report states that the postgraduate program included "advanced-level academic studies in Database management Systems, Operating Systems, Information Systems Planning, Marking, Management Information Systems, Business Organization and Management and related areas."

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).

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. See generally Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework – Degree Structure*, (last updated October 1, 2001), available at <http://www.education.nic.in/htmlweb/higedu.htm> (printed copy incorporated into the record of proceeding). 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 of Commerce from Aligarh Muslim University in the state of Uttar Pradesh, India, will not be considered the "foreign equivalent degree" to a United States bachelor's degree for purposes of this preference visa petition.

Counsel asserts, however, that the beneficiary's credentials are more than the three-year Bachelor of Commerce degree. In addition, the beneficiary has a Postgraduate Diploma in Personnel Management And Industrial Relations from the Xavier Labour Relations Institute in Bihar, India, which, when combined with the bachelor's degree, are "equivalent to a Bachelor of Business Administration Degree with a concentration in Management Information systems, from an accredited institution of higher education in the U.S."

This office notes, however, that the November 18, 2002 evaluation report of Global Credential Evaluators, Inc undermines counsel's assertion by stating the postgraduate coursework at Xavier Labour Relations Institute in Bihar, India, "is not recognized as academic course work [and that Xavier] ...is not recognized by the Indian Grants Commission or the Association of Indian Universities." Accordingly, such evidence cast doubt on the petitioner's evidence as a whole. As was stated in *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988):

Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.

The petitioner has not established that the beneficiary has a four-year bachelor's degree in Commerce, or its equivalent, on April 28, 2003. Therefore, the petitioner has not overcome this portion of the director's decision.

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.