

**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

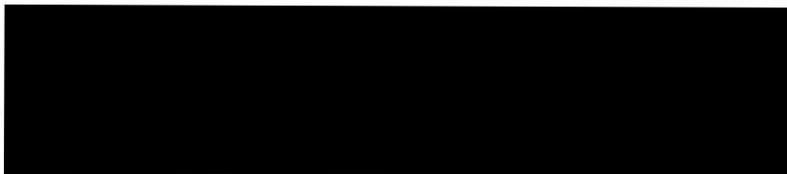
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

**PUBLIC COPY**

B6



FILE: EAC 04 214 50326 Office: VERMONT SERVICE CENTER Date **OCT 31**

IN RE: Petitioner:  
Beneficiary:



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, Chief  
Administrative Appeals Office

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

The petitioner is a computer consulting company. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). As set forth in the director's February 2, 2005 denial, the director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

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.

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 not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

*Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750, Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750, Application for Alien Employment Certification, as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on February 14, 2001.<sup>1</sup> The proffered wage as stated on the Form ETA 750 is \$67,000.00 per year. The Form ETA 750 states that the position requires a bachelor's degree in

---

<sup>1</sup> The instant petition is for a substituted beneficiary. An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memo. from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, *Substitution of Labor Certification Beneficiaries*, at 3, [http://ows.doleta.gov/dmstree/fm/fm96/fm\\_28-96a.pdf](http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf) (March 7, 1996).

computer science or engineering and two years of experience in the job offered or two years of experience in computer software developing and/or consulting.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>2</sup> On appeal, counsel submits a brief, the petitioner's previously submitted IRS Forms 1120, U.S. Corporation Income Tax Returns, for 2000, 2001, 2002 and 2003, an affidavit from the petitioner's President indicating that the tax returns submitted on appeal are exact copies of the petitioner's tax returns filed with the IRS, the petitioner's payroll tax records for the first, second and fourth quarters of 2004, two memos from William R. Yates, Associate Director, Operations, Citizenship and Immigration Services (CIS), regarding the issuance of requests for evidence, minutes from a 1993 meeting of the petitioner's Board of Directors, Certificate of Incorporation for the petitioner's parent company in India, Certificate of Change of Name for the petitioner's parent company in India, a letter dated January 15, 1994 from the Reserve Bank of India approving the proposal of the petitioner's parent company to establish a wholly-owned subsidiary in the United States, a Certificate of Authority issued by the Secretary of State of the State of New Jersey indicating that the petitioner is authorized to transact business in New Jersey, a Certificate of Existence issued by the Secretary of State of the State of Georgia indicating that the petitioner is authorized to transact business in Georgia, and the petitioner's stock certificates. The record does not contain any other evidence relevant to the petitioner's ability to pay the wage.

The evidence in the record of proceeding shows that the petitioner is structured as a C corporation. The petitioner is a wholly-owned subsidiary of Akshay Software Technologies Ltd., a foreign corporation incorporated in India. On the petition, the petitioner claimed to have been established in 1993, to have a gross annual income of \$8,000,000.00, and to currently employ over 100 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the Form ETA 750B, signed by the beneficiary on June 23, 2004, the beneficiary claimed to have worked for the petitioner as a systems analyst from September 2001 to the date he signed the Form ETA 750B.

On appeal, counsel asserts that the petitioner's tax returns establish its ability to pay the proffered wage. Counsel states that the director should have issued a request for evidence (RFE) in this matter.<sup>3</sup> Counsel also asserts that the petitioner employed the beneficiary in all relevant years, that it paid the beneficiary partial

---

<sup>2</sup> 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).

<sup>3</sup> Counsel's assertion that the director should have issued an RFE in this matter is without merit, as the director issued an RFE to the petitioner on October 21, 2004. The regulation states that the petitioner shall submit additional evidence as the director, in his or her discretion, may deem necessary. The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established, as of the time the petition is filed. *See* 8 C.F.R. §§ 103.2(b)(8) and (12). Although specifically and clearly requested by the director in its RFE, the petitioner declined to provide IRS-certified copies of its corporate tax returns for 2000, 2001, 2002 and 2003. The certified tax returns would have demonstrated the amount of taxable income the petitioner reported to the IRS and further reveal its ability to pay the proffered wage. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

wages in 2001 and that it paid the beneficiary the full proffered wage in 2002 and 2003. Counsel further asserts that the petitioner's other current liabilities listed at Line 18 of its IRS Form 1120, Schedule L, should not be considered in the calculation of the petitioner's ability to pay, as the liabilities are debts due to the petitioner's parent company. Counsel asserts that the petitioner has requested certified copies of its tax returns from the IRS and will provide them upon receipt.<sup>4</sup> Finally, counsel asserts that the petitioner's parent company and its affiliated entities employ approximately 200 employees, but that the petitioner employs approximately 23 employees in the United States.<sup>5</sup>

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 750 labor certification application establishes a priority date for any immigrant petition later based on the ETA 750, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. See *Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977). See also 8 C.F.R. § 204.5(g)(2).

In determining the petitioner's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage. In the instant case, the petitioner has not established that it employed and paid the beneficiary the full proffered wage on the priority date or subsequently.<sup>6</sup>

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's

---

<sup>4</sup> The director noted in his decision that the petitioner's 2001 tax returns had been altered. The petitioner has not addressed this issue in its appeal. While the petitioner claims that the tax returns submitted on appeal are exact copies of the returns filed with the IRS, it is unlikely that the petitioner's tax returns were processed by the IRS as filed. The figures provided at Lines 17(d) and 18(d) of Schedule L of the petitioner's IRS Form 1120 for 2000 do not match the figures provided at Lines 17(b) and 18(b) of Schedule L of the petitioner's IRS Form 1120 for 2001. The petitioner has provided no explanation for the discrepancy. 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. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988).

<sup>5</sup> In general, 8 C.F.R. § 204.5(g)(2) requires annual reports, federal tax returns, or audited financial statements as evidence of a petitioner's ability to pay the proffered wage. That provision further provides: "In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage." The petitioner did not submit a statement from a financial officer regarding the petitioner's ability to pay the proffered wage, and the petitioner submitted no other evidence to establish that it employs 100 or more workers. The petitioner's payroll tax records for the first, second and fourth quarters of 2004 establish that the petitioner employed 23 workers in 2004.

<sup>6</sup> Despite counsel's appellate assertion, the record lacks any copies of IRS Forms W-2, Wage and Tax Statements, showing wages paid to the beneficiary, and the record contains no other evidence of the wages paid to the beneficiary by the petitioner. The record therefore lacks evidence that the petitioner was paying the proffered wage during the relevant time period and lacks evidence to determine the amount of any increase which would be necessary to raise the beneficiary's actual wage to the proffered wage during that time period. The AAO therefore must evaluate the petitioner's ability to pay the entire proffered wage as of the priority date and continuing to the present.

federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

For a C corporation, CIS considers net income to be the figure shown on Line 28 of the Form 1120, U.S. Corporation Income Tax Return. The record before the director closed on January 11, 2005 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence. As of that date, the petitioner's 2004 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2003 is the most recent return available. The petitioner's tax returns demonstrate its net income for 2001, 2002 and 2003, as shown in the table below.

- In 2001, the Form 1120 stated net income of \$34,945.00.
- In 2002, the Form 1120 stated net income of -\$748,557.00.
- In 2003, the Form 1120 stated net income of \$49,619.00.

Therefore, for the years 2001, 2002 and 2003, the petitioner did not have sufficient net income to pay the proffered wage of \$67,000.00.

If the net income the petitioner demonstrates it had available during that period, if any, added to the wages paid to the beneficiary during the period, if any, do not equal the amount of the proffered wage or more, CIS will review the petitioner's assets. Net current assets are the difference between the petitioner's current assets and current liabilities.<sup>7</sup> A corporation's year-end current assets are shown on Schedule L, lines 1 through 6 and include cash-on-hand. Its year-end current liabilities are shown on lines 16 through 18.<sup>8</sup> If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets for 2001, 2002 and 2003, as shown in the table below.

- In 2001, the Form 1120 stated net current assets of -\$1,623,890.00.
- In 2002, the Form 1120 stated net current assets of -\$1,402,443.00.
- In 2003, the Form 1120 stated net current assets of \$128,764.00.

---

<sup>7</sup> According to *Barron's Dictionary of Accounting Terms* 117 (3<sup>rd</sup> ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

<sup>8</sup> Counsel asserts in his brief accompanying the appeal that the petitioner's other current liabilities listed at Line 18 of its IRS Form 1120, Schedule L, should not be considered in the calculation of the petitioner's ability to pay, as the liabilities are debts due to the petitioner's parent company. However, counsel provides no support for this assertion. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Therefore, for the years 2001 and 2002, the petitioner did not have sufficient net current assets to pay the proffered wage of \$67,000.00. For the year 2003, the petitioner had sufficient net current assets to pay the proffered wage.

Thus, from the date the Form ETA 750 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage as of the priority date through an examination of wages paid to the beneficiary, or its net income or net current assets except for 2003.<sup>9</sup>

Counsel's assertions on appeal cannot be concluded to outweigh the evidence presented in the tax returns as submitted by the petitioner that demonstrates that the petitioner could not pay the proffered wage from the day the Form ETA 750 was accepted for processing by the DOL.

The evidence submitted does not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date.

Beyond the decision of the director, the petitioner has failed to demonstrate that the beneficiary is qualified to perform the duties of the proffered position.<sup>10</sup> To determine whether a beneficiary is eligible for an employment based immigrant visa, CIS must examine whether the alien's credentials meet the requirements set

---

<sup>9</sup> CIS electronic records show that the petitioner filed at least five other I-140 petitions which have been pending during the time period relevant to the instant petition. If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. See *Matter of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750). See also 8 C.F.R. § 204.5(g)(2). The other petitions submitted by the petitioner in May 2004, June 2005, July 2005, August 2005 and March 2006 were approved in August 2004, November 2005, January 2006, December 2005 and August 2006, respectively. The record in the instant case contains no information about the proffered wage for the beneficiaries of those petitions, about the current immigration status of the beneficiaries, whether the beneficiaries have withdrawn from the visa petition process, or whether the petitioner has withdrawn its job offers to the beneficiaries. Furthermore, no information is provided about the current employment status of the beneficiaries, the date of any hiring and any current wages of the beneficiaries. Since the record in the instant petition fails to establish the petitioner's ability to pay the proffered wage to the single beneficiary of the instant petition, it is not necessary to consider further whether the evidence also establishes the petitioner's ability to pay the proffered wage to the beneficiaries of the other petitions filed by the petitioner, or to other beneficiaries for whom the petitioner might wish to submit I-140 petitions based on the same approved ETA 750 labor certifications.

<sup>10</sup> An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. 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); see also *Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications 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).

In the instant case, the Application for Alien Employment Certification, Form ETA 750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of programmer analyst. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	x
	High School	x
	College	x
	College Degree Required	Bachelor's
	Major Field of Study	Comp. Sc., Engg.

The applicant must also have two years of experience in the job offered or two years of experience in computer software developing and/or consulting. The duties of the job offered are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), he represented that he received a Bachelor of Science degree from Bombay University in India in 1980 and that he received a diploma in computer management from Bombay University in India in 1991. He does not provide any additional information concerning his education on that form. Further, on Part 15, eliciting information of the beneficiary's work experience, he represented that he worked as a systems analyst for the petitioner from September 2001 to the date he signed the Form ETA 750B. He also represented that worked as a project manager for the petitioner's parent company in India from November 1998 to August 2001, that he worked as a project leader for Mastek Limited in India from May 1997 to October 1998, that he worked as an E.D.P. Manager for M.N. Dastur & Company from May 1996 to May 1997, and that he worked as a systems analyst for the National Institute of Industrial Engineering in India from April 1992 to February 1996. He does not provide any additional information concerning his employment background on that form.

The record contains a copy of the beneficiary's Bachelor of Science degree from Bombay University in India, a copy of the beneficiary's diploma in computer management from Bombay University in India, an academic equivalency evaluation from The Trustforte Corporation dated March 23, 2001, a letter dated September 14, 1998 from Mastek Limited in India regarding the beneficiary's prior employment, a letter dated May 5, 1997 from M.N. Dastur & Company Ltd. in India regarding the beneficiary's prior employment, and a letter from The Zandu Pharmaceutical Works Ltd. regarding the beneficiary's prior employment.

The regulations define a third preference category professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." *See* 8 C.F.R. § 204.5(l)(2). The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

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 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 concerning the professional classification 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 record does not establish that the beneficiary holds a U.S. bachelor's degree or a foreign equivalent degree. The beneficiary holds a Bachelor of Science degree from Bombay University in India. The credentials evaluation submitted by the petitioner with the petition does not conclude that the applicant's course of instruction that led to the beneficiary's degree to be the equivalent of any specific amount of time spent at a U.S. college or university. A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245. In the instant case, the beneficiary did not submit his transcripts from Bombay University or any other evidence to establish the dates of his attendance at the university. Therefore, the beneficiary's degree from Bombay University cannot be considered a foreign equivalent degree.

The beneficiary also holds a diploma in computer management from Bombay University in India. However, the record does not demonstrate the diploma from Bombay University is a single academic degree that is a foreign equivalent degree to a U.S. bachelor's degree. As stated above, the regulation 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. The combination of a degree deemed less than the equivalent to a U.S. baccalaureate degree and a diploma or certificate does not meet that requirement.

The record contains an educational evaluation report from The Trustforte Corporation. 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). The evaluation from The Trustforte Corporation states that based on the beneficiary's Bachelor of Science degree from Bombay University and his diploma in computer management from Bombay University, the beneficiary has the equivalent of a United States bachelor of science degree in computer information systems. However, the evaluation does not conclude that the beneficiary's course of instruction that led to the degree or diploma to be the equivalent of any specific amount of time spent at a United States college or university. We do not find the determination of the credentials evaluation probative in this matter.

Further, the Trustforte Corporation is not a member of the National Association of Credential Evaluation Services (NACES). See <http://www.naces.org/members.htm> (accessed October 3, 2006). The U.S. Department of Education refers individuals seeking verification of the equivalency of their foreign degrees to American degrees through private credential evaluation services to NACES. The objective of NACES is to raise ethical standards in the types of credential evaluations provided by the private sector. In light of the

AAO's findings concerning the beneficiary's educational program, the credential evaluation provided by The Trustforte Corporation carries little evidentiary weight in these proceedings.

In this case, the labor certification clearly indicates that the beneficiary must possess a bachelor's degree in computer science or engineering, not a combination of a degree and a diploma which, when taken together, equals the same amount of coursework required for a United States baccalaureate degree. The petitioner has not demonstrated through the evidence contained in the record of proceeding that the beneficiary satisfies this requirement.

In addition, regarding the beneficiary's work experience, the regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation—*

(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.

The petitioner failed to provide the required documentation of the beneficiary's two years of prior work experience as required by 8 C.F.R. § 204.5(l)(3). The letter dated September 14, 1998 from Mastek Limited in India states that the beneficiary worked as a project leader from May 5, 1997 to September 14, 1998. It also states that he worked on projects using COBOL, Mainframe and ORACLE. However, the letter does not list the beneficiary's job duties as project manager. Further, the letter dated May 5, 1997 from M.N. Dastur & Company Ltd. in India states that the beneficiary worked as assistant manager (software) from May 27, 1996 to May 6, 1997. However, the letter does not list the beneficiary's job duties as assistant manager (software). Thus, the letters from [REDACTED] Limited and [REDACTED] & Company Ltd. do not meet the regulatory requirements of 8 C.F.R. § 204.5(l)(3).

In addition, the letter from The [REDACTED] Pharmaceutical Works Ltd. states that the beneficiary worked as a system analyst from February 26, 1996 to May 24, 1996. The letter states that the beneficiary was assigned to design the company's financial accounting system. However, the letter verifies approximately three months of the beneficiary's employment as a system analyst. The Form ETA 750 specifically requires that the beneficiary have two years of experience as a programmer analyst or two years of experience in computer software developing and/or consulting. The preponderance of the evidence does not demonstrate that the beneficiary acquired two years of qualifying experience in the job offered or the related occupation from the evidence submitted into this record of proceeding. Thus, the petitioner has not demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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.