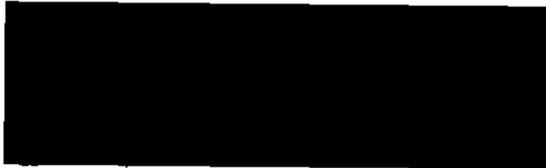


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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



BE

DATE: SEP 11 2012

OFFICE: TEXAS SERVICE CENTER

FILE: 

IN RE:

Petitioner:

Beneficiary:



PETITION: Immigrant petition for Alien Worker as a Skilled Worker or a 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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

A handwritten signature in black ink, appearing to read "Perry Rhew".

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was initially approved by the Director, Texas Service Center (Director). The approval was subsequently revoked by the Director. The petitioner filed a Form I-290B, Notice of Appeal or Motion, which is now before the Chief, Administrative Appeals Office (AAO). The revocation decision will be withdrawn and the case remanded to the Director for a new decision.

The petitioner is a software consulting company. It seeks to employ the beneficiary permanently in the United States as a software engineer and to classify him as professional or a skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. §1153(b)(3)(A).

Section 203(b)(3)(A)(i) of the Act provides for the granting of preference classification to qualified immigrants who are capable 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 provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The petitioner filed its Form I-140, Immigrant Petition for Alien Worker, on October 28, 2005. As required by statute, the petition was accompanied by a Form ETA 750, Application for Alien Employment Certification, which was filed with the Department of Labor (DOL) on May 9, 2003, and certified by the DOL on September 20, 2005.

On February 16, 2006, the Director approved the petition, classifying the beneficiary as a professional or skilled worker. On February 6, 2009, however, the Director issued a Notice of Intent to Revoke (NOIR), advising the petitioner of apparent inconsistencies in the record regarding the company's business locations, and doubts about its ability to pay the proffered wages of numerous other beneficiaries of employment-based immigrant (Form I-140) and nonimmigrant (Form I-129) petitions, in addition to the proffered wage of the beneficiary in the instant proceeding. The petitioner was given 30 days to respond to the NOIR.

On March 24, 2009, the Director issued a Notice of Revocation (NOR) on the ground that the petitioner did not respond to the NOIR and therefore failed to resolve the evidentiary inconsistencies in the record. The Director stated that the NOIR had been returned to the TSC on March 16, 2009, with no response.

The petitioner filed a timely Form I-290B, Notice of Appeal or Motion, on April 7, 2009, asserting that it did in fact file a response to the NOIR and supporting documentation within 30 days. The record supports the petitioner's claim. The response to the NOIR was, in fact, stamped as received by the Texas Service Center on March 6, 2009. The documentation accompanying the response addressed the issues raised by the Director in the NOIR.

The AAO has reviewed all the evidence of record. It notes that the petitioner has submitted documentary evidence of its ability to pay the proffered wage to the beneficiary for each of the years

2003-2008 in the form of Wage and Tax Statements (Forms W-2) issued to the beneficiary. The W-2 Forms show that the wages paid to the beneficiary exceeded the proffered wage (\$50,000 per year, as stated in the labor certification and the visa petition) in each of those years. The AAO concludes, therefore, that the petitioner has established its continuing ability to pay the proffered wage as of the priority date – May 9, 2003.¹

Based on the current record, however, the AAO cannot approve the petition. To be eligible for an employment-based immigrant visa the beneficiary must have all the education, training, and experience specified on the labor certification as of the application's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). As stated above, the priority date in this case is May 9, 2003.

The minimum education, training, and experience required for the job of software engineer in this case is set forth on the Form ETA 750 in Part A, Blocks 14 and 15 – as follows:

EDUCATION

College: *X [Yes]*

College Degree and Major Field of Study: *"Bachelor's, Computer Science or equivalent (will accept credential equivalent to a degree)"*

TRAINING *None*

EXPERIENCE

2 years in the job offered or 2 years in a related occupation – specifically, "related experience in Voice over IP software. Experience must include C# and ASP.net."

The documentation of record does not establish that the beneficiary has the education required on the labor certification.

The record shows that the beneficiary has the following educational credentials:

- An International Diploma in Computer Programming and Applications, dated December 14, 1991, from the National Center for Information Technology, United

¹ The priority date is the date the labor certification application underlying a visa petition was received for processing (filed) at the DOL. If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad.

Kingdom. The diploma was awarded upon the passage of an examination at the conclusion of a course given by [REDACTED] in Hyderabad, India.

- A Bachelor of Arts from [REDACTED] in India, dated November 28, 1998. The degree was awarded after the completion of coursework (obviously interrupted) *comprising three academic years that began in 1988 and concluded in 1998*. His fields of study were identified on the degree as political science, public administration, and sociology.
- Ten courses, six of which were in the field of computer science (designated as COMSC on the official transcript), completed at the [REDACTED] over a one-year time span from the summer session of 1995 through the spring semester of 1996. These courses apparently did not culminate in a degree or any other educational credential.

As evidence of the U.S. equivalency of this education the petitioner has submitted an evaluation authored by Dr. [REDACTED] of [REDACTED] dated August 31, 1999. According to the [REDACTED] evaluation, the beneficiary's credentials listed above (as well as a Microsoft Certified Professional Certificate not in the record) are equivalent to a U.S. bachelor's degree in political science and computer science. Dr. [REDACTED] offers no explanation, however, as to how he arrives at this conclusion. As the beneficiary appears to have taken no more than six computer science courses at a college or university, the [REDACTED] evaluation lacks credibility.

U.S. Citizenship and Immigration Services (USCIS) may, in its discretion, utilize statements submitted as expert testimony as advisory opinions. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of expert opinions in support of a petition is not presumptive evidence of eligibility. *Id.* at 795. USCIS may give less weight to an opinion that is not corroborated, not in accord with other information, or questionable in any way. *Id.* *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)).

The [REDACTED] created by the [REDACTED] of [REDACTED] is another resource for information about the U.S. equivalency of foreign educational credentials. As stated on its website, [REDACTED] is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." [REDACTED]. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* [REDACTED] is "a web-based resource for the evaluation of foreign educational credentials." [REDACTED]. Authors for [REDACTED] are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with

██████████ on the ██████████² If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.* USCIS considers ██████████ to be a reliable, peer-reviewed source of information about foreign credentials equivalencies.³

According to ██████████ a bachelor of arts degree in India is comparable to two to three years of post-secondary study in the United States (depending on the length of the Indian degree program). A three-year bachelor of arts program in India, therefore, would most likely be comparable to three years of education at a U.S. college or university.

The ██████████ evaluation does not claim that the beneficiary's three-year degree from ██████████ University is equivalent to a U.S. bachelor's degree, which generally comprises four academic years. See *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Nor does the evaluation explain how that shortfall is remedied by the beneficiary's International Diploma in Computer Programming and Applications, which is not an academic degree from a college or university, and some coursework at the University of ██████████ which did not result in a degree of any kind. Moreover, the beneficiary's Bachelor of Arts degree, as far as the record shows, did not include any courses in the computer field. The only computer courses in the beneficiary's academic record were taken during his non-degree stint at the University of Central Oklahoma. Based on the foregoing considerations, the AAO is not persuaded by Dr. ██████████'s conclusion that the beneficiary's education is equivalent to a U.S. bachelor's degree in computer science – the field of study required in the labor certification.

Since the Director made no finding in these proceedings as to the U.S. equivalency of the beneficiary's education, the petition will be remanded for consideration of this issue, and any other issue he deems necessary. The Director shall consider the evidence submitted by the petitioner in response to the NOIR, and may request additional evidence. The petitioner may provide additional

² See *An Author's Guide to Creating AACRAO International Publications* available at ██████████

³ In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by ██████████ to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in ██████████ and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

evidence within a reasonable period of time, as set by the Director. Upon receipt of all the evidence, the Director will enter a new decision.

The burden of proof in these proceedings rests solely with the petitioner. *See* Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The Director's decision of March 24, 2009, revoking the approval of the petition, is withdrawn. The petition is remanded to the Director for review in accordance with the foregoing discussion.