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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

MAR 1 6 2004

File: LIN 00 254 53279 Office: NEBRASKA SERVICE CENTER Date:

IN RE: Petitioner:
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: SELF-REPRESENTED

INSTRUCTIONS:
This is the decision 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 the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of Citizenship and Immigration Services (CIS) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. § 103.7.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed the appeal. The matter is now before the AAO on a motion to reconsider. The motion will be granted, the previous decisions of the director and the AAO will be affirmed and the petition will be denied.

The petitioner sought to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), as a professional worker. The petitioner is a computer software-consulting firm. It sought to employ the beneficiary as a staff consultant.

The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

The AAO dismissed the petitioner's appeal on July 30, 2001. The AAO also found that the beneficiary lacked the necessary bachelor's degree as required by the terms of the labor certification.

Counsel moves to reconsider the AAO's decision. Counsel argues that the beneficiary's combination of education and work experience can satisfy the requirements of a third preference professional pursuant to 8 U.S.C. § 1153 (b)(3)(A)(ii).

In pertinent part, Section 203(b)(3)(A)(ii) of the Act provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House,* 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is December 6, 1999.

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 staff consultant. In the instant case, item 14 describes the "college degree required" as a "Bachelor's Degree." The major field of study must be computer science. Item 15 adds additional alternative major fields of study that an applicant may have, including majors in applied mathematics, applied science, engineering, or computer information systems.

The record indicates that the beneficiary holds a Bachelor of Commerce degree received in 1986 from the University of Mysore, India. He also acquired a certificate in computer programming in 1995 from "Hive Computers." A November 1999 evaluation from "The Knowledge Company" reviewed the beneficiary's credentials and concluded that the beneficiary's studies at the University of Mysore is equivalent to three years toward a bachelor's degree in business administration in the United States and the equivalent of two years of undergraduate study toward a U.S. bachelor's degree in computer information systems. It also surmises that a combination of the beneficiary's

Bachelor of Commerce degree and his approximately sixteen years of work experience is the equivalent of a U.S. bachelor's degree in computer information systems.

Matter of Sea Inc., 19 I&N 817 (Comm. 1988), provides:

> This Service uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) provides in pertinent part:

> 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 an entry into the occupation.

Because neither the Act nor the regulations indicate that a bachelor's degree must be a United States degree, CIS will recognize a foreign equivalent degree to a United States baccalaureate. In this case, however, the beneficiary's foreign bachelor's degree has not been shown to be the equivalent to a United States degree. Subsequently, an educational evaluation determined that the beneficiary's bachelor's degree and work experience equal a United States baccalaureate; however, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is quite clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. It is also noted that the preamble to the publication of the final rule at 8 C.F.R. § 204.5 in 1991 specifically dismissed the option of equating "experience alone" to the required bachelor's degree for a second preference classification as an advanced degree professional or as a professional under the third classification. *See* 56 Fed. Reg. 60897 (Nov. 29, 1991).

On motion, counsel argues that the beneficiary's work experience can be substituted in lieu of a full four-year baccalaureate degree in the pertinent field. This is not persuasive in view of the regulatory requirements discussed above. Counsel cites cases that appear to pre-date the regulation for the proposition that a third preference professional is not required to possess a bachelor's degree.

Finally, as noted in the AAO's initial decision, the terms of the labor certification in this case do not define or accept any equivalency less than a bachelor's degree. The only amendments to the degree are offered as alternatives to the field of study as set forth in Item 15. CIS may not ignore a term, nor impose additional requirements in reviewing a labor certification. *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).

Based on a review of the requirements of the approved labor certification and the evidence contained in the record, the petitioner has been unable to present persuasive argument to overcome the previous decisions of the director and the AAO.

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 sustained that burden.

ORDER: The AAO's decision of July 30, 2001 is affirmed. The petition is denied.