

U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
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BCIS, AAO, 20 Mass. 3/F
Washington, D.C. 20536

DIVINE, INC.
3333 WARRENVILLE ROAD, STE 800
LISLE, IL 60532

E21 -
Best have a
Bachelor's Degree - equivalent
to such a degree not good
JUL 17 2003

File: A96 146 275 Office: Nebraska Service Center

Date:

IN RE: Petitioner: DIVINE, INC.
Beneficiary: SANJAY PASRICHA

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

IN BEHALF OF PETITIONER:

SHEILA MINIHANE
SIDLEY AUSTIN BROWN & WOOD (CHICAGO)
10 SOUTH DEARBORN STREET
CHICAGO, IL 60603


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 the Service 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. Wiemam, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a senior consultant (Oracle Business Applications). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not qualify as an advanced degree professional.

On appeal, counsel argues that the beneficiary has the equivalent of an advanced degree.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level.

8 C.F.R. § 204.5(k)(2) permits the following substitution for an advanced degree.

A United States baccalaureate degree or a *foreign equivalent degree* followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree.

(Emphasis added.) The petitioner claims that the beneficiary has the equivalent of a baccalaureate degree plus at least five years of progressive experience. On Form ETA-750B, the beneficiary indicated that he had a Bachelor of Science degree in accounting from the University of New Delhi. The beneficiary, who signed the form under penalty of perjury, did not list any other education or degree under Part 11. The beneficiary listed his membership in the Indian Institute of Chartered Accountants under Part 13 as a professional license.

The petitioner initially submitted the beneficiary's bachelor of commerce degree issued by the University of Delhi in 1983 and an evaluation of the beneficiary's credentials by the Trustforte Corporation. The Trustforte Corporation concluded that the beneficiary's three-year degree from the University of Delhi "satisfied requirements equivalent to the completion of three years of academic studies toward a Bachelor of Business Administration Degree from an accredited institution of higher education in the United States." The Trustforte Corporation then notes that the beneficiary passed the final examination of the Institute of Chartered Accountants of India. The evaluation then states:

The Institute of Chartered Accountants of India is a nationally-recognized professional association for the accounting profession in India, which grants membership to individuals who have achieved advanced standing in the profession and have passed the requisite qualifying examinations. Completion of the Final Examination of The Institute of Chartered Accountants of India and the attainment

of Associate Membership is analogous to the completion of concentrated coursework in accounting at the baccalaureate level.

Based on the reputation of the University of Delhi, the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, as well as completion of the Final Examination and Associate Membership in The Institute of Chartered Accountants of India, it is the judgment of The Trustforte Corporation that [the beneficiary] received the equivalent of a Bachelor of Business Administration Degree, with a concentration in Accounting from an accredited institution of higher education in the United States.

In response to the director's request for additional documentation, the petitioner submitted the beneficiary's Final Exam Certificate issued by the Institute of Chartered Accountants of India issued February 21, 1991, the beneficiary's Certificate of Membership reflecting his associate membership in the Institute of Chartered Accountants of India, the transcripts for the beneficiary's marks on the intermediate and final exams, and a new evaluation from Evaluation Service, Inc. The new evaluation provides that the beneficiary's bachelor of commerce degree is "the academic equivalent of three years of university study in business administration at a regionally accredited institution in the United States," and that his membership in the Institute of Chartered Accountants of India "represents the academic equivalent of a bachelor's degree in accounting from a regionally accredited institution in the United States."

The director concluded that the beneficiary did not have a *degree* that was equivalent to a U.S. baccalaureate degree. Specifically, the director concluded that since membership in the Institute of Chartered Accountants of India is based in part on professional experience, it could not be considered equivalent to an academic degree. On appeal, counsel argues that foreign education should not be excluded as equivalent to a U.S. degree because it includes "externship work." Counsel further argues that "neither the statute nor the regulations prohibit a determination of a U.S. educational equivalency based on a combination of foreign education."

The petitioner submits a new evaluation from Evaluation Service, Inc. that provides:

In order to obtain the title of 'Associate Member' of the Institution of Chartered Accountants of India, all students must complete a program that includes academic studies and examinations, as well as a period of professional experience, which serves as an 'externship' in the academic program. If the student does not complete this 'externship' component, they will not be awarded the final diploma. This is not at all unlike programs completed by students at U.S. universities and colleges who are enrolled in cooperative (co-op) programs in the United States. If a U.S. student does not complete this period of professional practice as part of the bachelor's degree requirement, they will not be awarded the degree. This is the exact same in India. Therefore, this is not 'work experience' outside of the academic requirement.

The evaluation then provides information allegedly from the sources on which it relied reflecting that associate membership in the Institute of Chartered Accountants of India "may be considered for graduate admission." The petitioner did not submit the original materials.

The petitioner also submitted an evaluation from a third entity, International Credentialing Associates, Inc. This final evaluation provides that:

[The beneficiary] continued his education in a program consisting of part-time study, articulated clerkship and examination through the Institute of Chartered Accountants of India, New Delhi, India. After final examination in December 1990, he was awarded a passed Final Examination Certificate on February 21, 1991. This Certificate represents completion of the equivalent of two years of U.S. upper division undergraduate study in Accounting Studies.

* * *

[The beneficiary's] combined Bachelor of Commerce degree and Associate Membership in the Institute of Chartered Accountants of India is considered equivalent to the U.S. awarded degree Bachelor of Science in Business Administration with a major in Accounting. *

We acknowledge that Evaluation Service, Inc. states that the beneficiary's membership in and of itself constitutes a degree equivalent to a U.S. baccalaureate degree and refers to the membership certificate as a "diploma." Evaluation Service, Inc. also indicates, however, that membership is based in part on an education obtained elsewhere. Moreover, both of the other evaluation services conclude that only the combination of the beneficiary's bachelor of commerce degree and his membership are equivalent to a U.S. baccalaureate degree.

Matter of Sea, Inc., 19 I&N 817 (Commissioner 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.

We disagree with counsel that the law and regulations do not require a single degree that is equivalent to a U.S. baccalaureate degree. 8 C.F.R. § 204.6(k)(2) provides that a "United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience" is equivalent to an advanced degree. Thus, under the plain language of the regulation, the petitioner must demonstrate that the beneficiary obtained "a degree" and that the "degree" is equivalent to a U.S. baccalaureate degree.¹ Further, 8 C.F.R. § 204.5(k)(3)(A) requires "an official *

¹ We do not find that our interpretation would disqualify an individual who obtained an associates degree at a community college and subsequently received a baccalaureate degree at a university. If the university awarded the baccalaureate degree after less than four years, it would be because it

academic record showing that the alien has a United States advanced degree or a foreign equivalent degree." All this language reflects that the equivalent credential must be a degree, not a professional membership. While the petitioner submitted the beneficiary's examination results from the Institute of Chartered Accountants of India, he did not submit an official academic record for any course work at the institute. The Trustfor Corporation indicates that the Institute of Chartered Accountants for India is "a professional association for the accounting profession in India." Thus, the Institute does not appear to be a degree-awarding institute of higher learning. As stated above, on the Form ETA-750B, the beneficiary himself listed his membership under "licenses" not "degrees." Professional certification, even as the result of an examination, does not meet the regulatory requirement of a foreign equivalent *degree*.

Finally, we do not find counsel's "externship" arguments persuasive. While many universities offer or even require practical experience, this experience is usually overseen by a professor, is for academic credit and may be graded. Even if required for the final degree, the university, a degree-awarding institute, issues the ultimate degree. Professional experience required by a professional association for membership is not remotely similar to an academic practical experience requirement by a degree-awarding institution.

In light of the above, we concur with the director that that the beneficiary does not have the equivalent of a U.S. baccalaureate degree. Thus, the beneficiary's experience cannot be considered post-baccalaureate experience. In light of the above, the beneficiary is not an advanced degree professional as defined in the regulations regardless of whether he meets the job requirements of the labor certification.

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.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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allowed the student to transfer his or her community college credits towards the four-year degree that the university normally awards. Thus, the final degree, and not a combination of degrees, would be a baccalaureate degree.