



U.S. Department of Justice  
Immigration and Naturalization Service

HQ 70/6.2.8

Office of Adjudications

425 I Street NW  
Washington, DC 20536

JAN 7 2003

Mr. Aron Finkelstein  
Law Office of Sheela Murthy  
10451 Mill Run Circle, Suite 100  
Owings Mills, Maryland 21117

Dear Mr. Finkelstein:

This letter is in response to your December 27, 2002 letter regarding 1-140 petitions for members of the professions holding an advanced degree.

You ask whether the reference to "a foreign equivalent degree" in 8 CFR 204.5(k)(2) means that the foreign equivalent advanced degree must be in the form of a single degree. Despite the use of the singular "degree," it is not the intent of the regulations that only a single foreign degree may satisfy the equivalency requirement. Provided that the proper credential evaluations service finds that the foreign degree or degrees are the equivalent of the required US degree, then the requirement may be met.

You also ask whether the "five years of progressive experience in the specialty," referred to in 8 CFR 204.5(k)(2), must be accrued in the US or whether foreign experience may count towards establishing this requirement. The progressive experience may be accrued in the US or abroad. Please note, however, that in this context education and experience may not be combined to satisfy the degree requirement. An actual degree or degrees is required.

We hope that this information has been useful to you. If you have further questions concerning this matter, please do not hesitate to contact this office at the above address.

Sincerely,

Efrén Hernández III  
Director, Business and Trade Services



**THE LAW OFFICE OF SHEELA MURTHY, P.C.**

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December 27, 2002

Efren Hernandez III, Esq.  
Director, Business and Trade Services  
Immigration & Naturalization Service  
Office of Adjudications  
425 I Street NW  
Room 3014  
Washington, DC 20336

RE: Interpretation of 204.5(k)(1) and (2) to allow foreign academic credentials as equivalent to a U.S. Baccalaureate degree

Dear Mr. Hernandez:

Thank you for taking the time today to speak with me in regards to the above reference matter. Our office is writing to request your opinion with respect to the INS interpretation of 8 CFR § 204.5(k)(1) and (2).

The regulation states in relevant part:

*(k) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. (1) Any United States employer may file a petition on the Form I-140 for the classification of the alien under section 203(b)(2) of the Act as an alien who is a member of the professions holding an advanced degree or an alien of exceptional ability in the sciences, arts, or business. \*\*\**

*(2) Definitions. As used in this section: Advanced degree means any United States academic or professional degree or a **foreign equivalent degree** above that of a baccalaureate 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 (**boldface added**).*

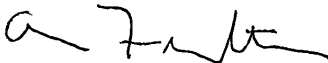
[End of quote]

It appears that some INS officers are interpreting the regulation to mean only a **FOREIGN DEGREE** can be considered equivalent to a U.S. baccalaureate degree for qualifying under section 203(b)(2) of the Act. These INS examiners believe that foreign education (when no formal degree is conferred or a 3 year foreign degree combined with a diploma that is determined to be equivalent to a United States degree) does not count. This appears to be the case even when the foreign academic education is clearly the exact same quality and level as a United States program and/or the completion of a foreign degree program, as determined by properly evaluated credentials.

As we discussed on the telephone today, this is a misapplication of the regulation which is adversely affecting a large number of people who are otherwise qualified to obtain an approval of the I-140 petition under section 203 (b)(2) of the Act. Please confirm this position.

Thank you for your valuable time and attention to this very important matter. In this Holiday Season we take this opportunity to wish you and your family a happy and healthy New Year.

Sincerely,

A handwritten signature in black ink, appearing to read 'Aron A. Finkelstein', written in a cursive style.

Aron A. Finkelstein

cc: Sheela Murthy, Esq.