



AAO APPROVES EB-2 I-140 FOR BENEFICIARY WITH A 3-YEAR BACHELOR'S DEGREE AND A 2-YEAR MASTER'S DEGREE FROM INDIA

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by

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In order to qualify under the Employer-Based Second Preference (EB-2) category pursuant to §203(b)(2) of the Immigration and Nationality Act; 8 U.S.C. §1153(b)(2), the position described on a labor certification must require an advanced degree or, in the alternative, a Bachelor's degree plus five years of progressive post-baccalaureate experience.¹ The employer of a foreign national beneficiary must, upon the submission of the immigrant visa petition, Form I-140, demonstrate that the beneficiary possesses the requisite qualifications for the position. If the beneficiary has a foreign degree, he or she must demonstrate that it is equivalent to a US advanced degree.

Recently, Master's degrees from foreign countries have not been able to pass muster. The USCIS, in particular, the Nebraska Service Center (NSC), has routinely issued denials on I-140 petitions filed on behalf of beneficiaries holding a 3-year Bachelor's degree followed by a 2-year Master's degree from Indian universities or beneficiaries from countries such as Russia holding a 5-year combined Bachelor's and Master's degree. NSC has been applying what is commonly referred to as the "6 year rule" to determine whether a beneficiary's Master's degree is the equivalent of a Master's degree from an accredited U.S. institution. Under this rule the I-140 petitioner must demonstrate that the beneficiary possesses six years of education in order to gain approval under the EB-2 advanced degree standard. In the US, a Master's degree is generally awarded after the completion of a 4 year Bachelor's degree and a two year

Master's degree program.

In an [unpublished decision](#) on December 5, 2007, the Administrative Appeals Office (AAO) approved an I-140 petition filed under the EB-2 category on behalf of a beneficiary holding a 3-year Bachelor's degree and a 2-year Master's degree from India. The labor certification² filed on behalf of the beneficiary for the position of Computer Software Engineer (Technical Specialist II), stated a degree requirement of a Master's degree in "Information Technology or related field (physics is a related field)." The NSC denied the I-140 petition on the grounds that the beneficiary did not possess a Master's degree. In sustaining the petitioner's appeal and approving the I-140 petition, the AAO stated:

The director declined to consider the beneficiary's Master of Science degree because it followed a three-year baccalaureate...In order to have experience and education equating to an advanced degree under Section 203(b)(2) of the Act, the beneficiary must have a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree. 8 C.F.R. 204.5(k)(2).

In this matter, however, the petitioner is not relying on a combination of multiple lesser degrees or education and experience to equate to a bachelor's degree. Rather, it is the petitioner's contention that the beneficiary's Master of Science degree from Andhra University constitutes a foreign equivalent degree to a U.S. academic or professional degree above the baccalaureate level.

...The petitioner submits new evaluations and expert opinions all concluding that the beneficiary's Master of Science degree is equivalent to a Master of Science degree in Physics from an accredited University...The Petitioner submitted the beneficiary's transcript for his Master's degree, which reflects two years of coursework. This transcript is consistent with the evaluations provided. Moreover, the Petitioner has provided consistent and reasonable evaluations all finding that the beneficiary's Master's degree is a foreign equivalent degree to a U.S. Master's degree. Thus, we are persuaded that the beneficiary qualifies for the certified job.

This AAO decision is in line with the regulation at 8 C.F.R. § 204.5 (k)(2) which does *not* require that a Beneficiary possess the foreign equivalent of a U.S.

Master's degree *and* the foreign equivalent of a U.S. Bachelor's degree, in order to qualify under the EB-2 category. Where the beneficiary is relying solely on his foreign Master's degree to qualify under the EB-2 category, the number of years he or she spent attaining his Bachelor's degree ought to be irrelevant.

This decision should not be perceived as a blanket endorsement of all 2-year foreign Master's degrees that are preceded by a 3-year Bachelor's degree. The USCIS and AAO will likely continue to evaluate these cases on a case-by-case basis. This AAO decision can serve as persuasive authority where: (1) the beneficiary possesses a 2-year foreign Master's degree including a transcript reflecting two years of coursework; and (2) the employer submits credible, consistent and reasonable evaluations (from education evaluators *and* universities) equating the beneficiary's foreign Master's degree to a U.S. Master's degree.

This decision will not have any effect on EB-2 cases where the labor certification requires a Bachelor's degree plus five years of experience and the beneficiary holds a 3-year Bachelor's degree. Petitioners claiming EB-2 eligibility by way of a beneficiary's Bachelor's degree plus five years of experience must be able to demonstrate the beneficiary's attainment of a foreign Bachelor's degree equivalent to a 4-year Bachelor's degree from an accredited U.S. institution *or* attainment of a foreign, combined Bachelor's and Master's degree that is the equivalent of a U.S. 4-year Bachelor's degree.

New Visa Bulletin for April 2008 reflects new priority date for EB-2 India

For the months of February and March 2008 the Department of State Visa Bulletin has reflected that visa numbers for EB-2 India were completely "unavailable." Prior to that, the EB-2 India priority date had retrogressed to 2000. **The new April 2008 visa bulletin now shows that the EB-2 category for India has changed from "unavailable" to a priority date of December 1, 2003.** This means that as of April 1, 2008 nationals of India with priority dates prior to December 1, 2003 will be eligible for approval of their pending adjustment of status applications or their immigrant visas at Consulates abroad.

The latest visa bulletin is available at:

http://travel.state.gov/visa/frvi/bulletin/bulletin_4177.html

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¹ 8 C.F.R. § 204.5(k)(2).

² The AAO decision also discussed the role of the Department of Labor (DOL) in the review of job requirements, citing federal cases that limit the DOL's role in certifying the labor certification application, to simply ascertaining whether there are able, willing, qualified and available U.S. workers for the job offered to the alien and whether employment of the alien would adversely affect the working conditions or wages of similarly employed U.S. workers. The decision as to whether the alien is in fact qualified to fill the offered position is one for the USCIS/AAO.