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WHY IS THE THREE YEAR DEGREE SO PROBLEMATIC IN IMMIGRATION LAW?

Posted on October 24, 2009 by Cyrus Mehta

A recent article in Newsweek, http://bit.ly/39fduB, notes a trend toward 3 year bachelor's degree programs in the United States instead of the usual four year program. The main advantage of cutting a year from the 4 year program is to reduce the tuition costs by 25%. Neither the quality nor length of the education gets affected in a 3 year degree program since the program can extend into the summer months over each of the 3 years. Also, the fall to spring academic year is a relic of an era prior to the American Revolution, where students would put down their books and work on the farms during the summer months.
While the Newsweek article suggests that there are good reasons for a shift towards the 3 year degree program, and educational systems in other countries have sensibly followed the 3- year program, possessing a 3 year degree puts a foreign national at a severe disadvantage when being sponsored by a US employer for the green card. Within the employment-based preference system, being classified under the Employment-based Second Preference (EB-2) puts one at a significant advantage over one who is classified under the Employment-based Third Preference (EB-3). There is no backlog in the EB-2 for most countries while the EB-3 is hopelessly backlogged, http://travel.state.gov/visa/frvi/bulletin/bulletin_4576.html. Even if the EB-2 for countries like India and China is backlogged, it is less so than the EB-3.

To be classified under the EB-2 under Section 203(b)(2) of the Immigration and Nationality Act, the job must require an advanced degree or its equivalent, which the USCIS defines as a bachelor's degree plus five years of post baccalaureate experience. This is a reasonable interpretation of the equivalency requirement to satisfy the advanced degree under Section 203(b)(2). Unfortunately, under the strained interpretation of Section 203(b)(2) by United States Citizenship and Immigration Service (USCIS), the bachelor's

degree must be a 4 year degree program in the foreign country in order for it to be equivalent to a US bachelor's degree. If the foreign national possesses a 3 year degree, it would generally not be recognized as being equivalent to a 4 year degree even if the course load during the 3 year program is comparable to the course load of a 4 year program. While the USCIS makes an exception to some 3 year degree programs, such as a U.K. degree, it only does so because the student spends one year in the A-level prior to college, which is comparable to a year in college in the United States. Other 3 year degree programs, such as the Bachelor of Commerce or Bachelor of Science degrees of India, do not qualify as being equivalent to a 4 year US degree. To add further insult to injury, even if the holder of a 3 year Indian degree has additional education such as a Charted Accountancy certification or a post-graduate diploma in Computer Science, that would not suffice. The USCIS, especially its Nebraska and Texas Service Centers, which adjudicates I-140 immigrant visa petitions, insist on a single source 4 year degree.

It serves absolutely no public policy purpose for the USCIS to deny EB-2 classification to those who graduate from universities that have 3 year degree programs, even though it can be demonstrated that such a degree may be qualitatively similar to a 4 year US degree. And even if such an individual seeks EB-3 classification, it is imperative that the labor certification properly define what the employer means by a degree that is less than a 4 year bachelor's degree. Thus, in the above examples, if the employer fails to state on the labor certification that it will accept a 3 year bachelor's degree plus one or more years of educational course work, the I-140 petition will get denied even if it is filed under EB-3 rather than EB-2. Most of these individuals are here legally in H-1B status and must wait for endless years in the EB-3 to get the green card even though their employers have undertaken a good faith, albeit unsuccessful, test of the domestic labor market. Many out of frustration will leave and return to their home countries, and the United States will be the loser of their valuable skills which were found to be in short supply.

If the USCIS chose to interpret the EB-2 provision, Section 203(b)(2), more broadly and sensibly, there is enough leeway to do so. Also, there is now sufficient evidence even in the US of 3 year degree programs. On the other hand, if the agency still desires to cling onto its narrow interpretation, which has caused needless hardship to 3-year degree holders, Congress must step in and clarify the degree equivalency requirement under EB-2. Indeed, the degree

equivalency requirement to establish eligibility for an H-1B visa is so much more sensible as it allows the foreign national to combine education and experience to demonstrate the equivalency of a US 4 year degree. The same standards of equivalency ought to apply when the foreign national is being sponsored by an employer for permanent residency.