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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

PUBLIC COPY

[redacted]

MAR 28 2003

File: [redacted] Office: Nebraska Service Center Date:

IN RE: Petitioner: [redacted]
Beneficiary:

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)

ON BEHALF OF PETITIONER:

[redacted]

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Elizabeth Kheyman

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office 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 software consultant. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary does not possess the required educational background, as stated on the Form ETA-750, Application for Alien Employment Certification.

On appeal, counsel argues that the beneficiary has an advanced degree and that the Service (now the Bureau) may not inquire into the field of the beneficiary's degree. Counsel further argues that the beneficiary also has the equivalent of an advanced degree, a bachelor's degree plus five years of progressive experience, and that the labor certification does not specify any particular field for the bachelor's 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.) As required by 8 CFR 204.5(k)(4), the petitioner submitted an individual labor certification, Form ETA-750, which has been endorsed by the Department of Labor. At block 14, the labor certification states that the minimum qualifications required for the position are a Master of Science and three years of experience. Under "Major Field of Study" for the degree, the labor certification refers to Part A of the addendum. Part A of the addendum, under "Major Field of Study" provides:

> Computer Science, Systems Analysis, Computer Information Systems, Management Information Systems, Computer Engineering, Electrical Engineering, Electronic Engineering, Electronics and Communication Engineering or Mathematics or its equivalent in education and experience. Will accept a bachelor's degree, or a foreign equivalent followed by at least 5 years of progressive experience in the specialty, in lieu of the required education and experience.

The petitioner initially submitted the beneficiary's Bachelor of Science degree issued by Gandhiji University, Kottayam in 1987, a Master of Arts degree in Hindi Language and Literature issued by Mahatma Gandhi University, Kottayam in 1992, and an evaluation of these degrees by International

Education Evaluations, Inc. The evaluation provides that the first degree "equates to three years of academic credits (106 semester credit hours) which may be applied to a degree." The evaluation further states that the content of the petitioner's Master of Arts degree compares to that of an undergraduate or graduate major in Hindi language and literature in the United States. The evaluation concludes that the petitioner's post-secondary education credits "equate to the U.S.A. Bachelor of Arts and Master of Arts degrees in Hindi Language and Literature."

The director concluded that the beneficiary did not possess an advanced degree and that his education was not in the field specified on the labor certification.

On appeal, counsel argues that there is no statutory requirement regarding the discipline of the degree in order to be classified as an advanced degree professional. Counsel references a March 20, 2000 Service memorandum regarding what constitutes an advanced degree and how to determine whether or not an alien has an advanced degree. Counsel notes that the memorandum never states that the degree must be in any discipline. Alternatively, counsel argues that the labor certification also permits a bachelor's degree plus five years of experience without reference to the field in which the degree must be. The petitioner submits a new evaluation of the beneficiary's credentials concluding that the "nature of the courses and the credit hours involved" with the Master's degree "taken together with his prior studies, indicate that he satisfied substantially similar requirements to the attainment of at least a Bachelor's-level Degree from an accredited institution of higher education in the United States." The evaluator further stated that this education plus five years of experience in the computer field equates to a Master of Science in Computer Science. The evaluator does not specifically state, however, that the beneficiary's Master's degree is a degree that is equivalent to a U.S. baccalaureate degree.

None of counsel's arguments are persuasive. The memorandum referenced by counsel only relates to determinations of what constitutes an *advanced* degree. It does not address what constitutes a bachelor's degree or determining whether the alien meets the requirements of the position as described on the labor certification. The first issue is whether the petitioner's foreign Master's degree is a degree equivalent to a U.S. baccalaureate degree. As stated above, the evaluator does not conclude that it is.

The second issue is whether the beneficiary meets the requirements specified on the labor certification application. The Service memorandum referenced by counsel incorporates several examples of labor certifications and evaluates them. Page six of the memorandum includes a section entitled "Relevance of the alien beneficiary's actual qualifications." This section discusses the situation where the labor certification includes requirements beyond those of an advanced degree professional. The final sentence of that section provides that if the alien does not meet the years of experience specified on the labor certification, "the petition should be denied, not because the alien beneficiary is not an advance degree professional, but because the alien does not meet the actual qualifications as stated on the ETA-750." The example in the section relates to the number of years of experience, not the field of the degree, but it confirms that in addition to evaluating whether the beneficiary is an advanced degree professional, the Bureau may also inquire as to whether the beneficiary meets the requirements on the labor certification.

To determine whether a beneficiary is eligible for an employment-based immigrant visa supported by a labor certification, the Bureau must ascertain whether the alien is in fact qualified for the certified job. The Bureau will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications, the Bureau must look to the job offer portion of the labor certification to determine the required qualifications for the position; the Bureau may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). The cases cited by counsel concerning overqualified aliens are not contrary to our position that advanced degree professionals must also qualify for the position as defined on the labor certification.

Here, block 14 of the Form ETA-750 plainly requires a Master's degree with a major field of study in computer science, systems management, engineering, or mathematics. A degree in Hindi and literature is not related to computer science or information technology. The petitioner has not demonstrated that the beneficiary's three-year degree in physics is equivalent to a U.S. bachelor's degree in any field.

In addition, counsel's argument that the labor certification does not require a bachelor's degree in any particular field is not helpful. The labor certification requires a Master's degree and three years of experience in a related field. The addendum to the labor certification specifically identifies the field of education. While the final sentence of the addendum permits a lesser degree plus experience without reiterating the educational field, it immediately follows the designations of acceptable fields and does not specify that these fields are not similarly applicable to a bachelor's degree. While the new evaluation submitted on appeal concludes that the beneficiary's education and seven years of experience are equivalent to a Master of Science degree in Computer Science, *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.

Having already identified on the addendum the fields in which the beneficiary must hold a degree, we cannot conclude that it is a reasonable interpretation of the labor certification job requirements that a bachelor's degree in an unrelated field plus at least five years of progressive experience in a related field is equivalent to the general requirements of a Master's degree in a specific field plus three years of experience in a related field.

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.