



B5

U.S. Department of Justice
Immigration and Naturalization Service

PUBLIC COPY

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



JAN 29 2002

File: [Redacted] Office: Texas Service Center Date:

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



identification 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 which 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 which 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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 with post-baccalaureate experience equivalent to an advanced degree. The petitioner, a system and software development company, seeks to employ the beneficiary as a technical supervisor. The petition was accompanied by the required certification from the Department of Labor. The director found that the petitioner has not shown that the beneficiary meets the education requirements shown on the labor certification.

Section 203(b)(2)(A) of the Act states, in pertinent part, that:

Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent . . . , and whose services in the . . . professions . . . are sought by an employer in the United States.

The Service's regulation at 8 C.F.R. 204.5(k)(3)(i) states:

To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The labor certification in the record shows that the position requires either a master's degree plus one year of relevant experience, or a bachelor's degree plus five years of relevant experience.

Line 11 of the Form ETA-750B Statement of Qualifications instructs the beneficiary to list "Names and Addresses of Schools, Colleges and Universities Attended." The beneficiary listed only one school, Shenyang Institute of Aeronautical Engineering, from which the beneficiary claimed to have received a bachelor's degree in Aeronautical Engineering in July 1965 after four years of study. The beneficiary also indicated that he had worked full-time as an associate engineer at Fudan University from 1965 to 1987.

A translation of a letter from an unidentified witness at Fudan University states, in part:

[The beneficiary] attended Shenyang Institute of Aeronautical Engineering from 1961 to 1965, and received his certificate of Graduation in 1965. . . .

[The beneficiary] attended Shanghai 2nd College of Education, Electronics Department from 1983 to 1986, and received a Graduation Diploma in 1986. In 1987, he was promoted to the position of Engineer at Fudan University.
. . . .

Every year Fudan University grants a number of engineering positions to its research staff. Under the policy of Fudan University, the minimum qualification for a person to attend a position of Engineer is a Bachelor's degree. [The beneficiary] was promoted into the position largely due to education with Shenyang Institute of Aeronautical Engineering and Shanghai 2nd College of Education.

The petitioner submitted a credential evaluation from Foreign Credentials Service of America ("FCSA"), which states in part:

Shenyang Institute of Aeronautical Engineering, founded in 1959, lost its college status in 1961 due to national educational policy changes and was reestablished in 1978.

[The beneficiary] attended Shenyang Institute of Aeronautical Engineering 1961-65 and received a Certificate of Graduation in 1965. The Certificate represents four (4) years of vocational upper secondary education, leads to employment or higher education, and is comparable to a diploma from a vocational high school in the United States.

[The beneficiary] attended Shanghai 2nd College of Education, Electronics Department, 1983-86 and received a Graduation Diploma in 1986. The Diploma represents three (3) years of part time vocational post-secondary education, generally following ten (10) to twelve (12) years of primary/secondary education, leads to employment, and is comparable to a diploma from a trade/technical school in the United States.

[The beneficiary's] attendance at Shenyang Institute of Aeronautical Engineering 1961-65 and Shanghai 2nd College of Education 1983-86 combined with employment experience led to employment as an Engineer at Fudan University. According to a letter from Fudan University, the minimum qualification for employment as an Engineer is a Bachelor's degree. Therefore, [the beneficiary's]

academic and employment experience may be considered functionally comparable to a bachelor's degree in the United States.

In response to a request for further evidence, counsel stated in a letter dated February 24, 2000, "[the beneficiary] is a graduate of Shenyang Institute of Aeronautical Engineering in 1959. . . . The government shut the school down in 1959. But it was reestablished in 1978." Counsel offers no source for this account, which conflicts with all the other documentation of the beneficiary's education. The beneficiary, born December 28, 1944, was only 14 years old for most of 1959, and it is highly unlikely that he would have completed a baccalaureate at that young age. The 1959 graduation date conflicts with the 1961-1965 dates of attendance listed by the beneficiary himself on the Form ETA-750B. If the beneficiary graduated in 1959, then he graduated before the institute "lost its college status in 1961." If (as all the evidence indicates) he graduated in 1965, then the institute was not a college at the time he attended or graduated.

In the same letter, counsel added "[t]he initial credential evaluation (dated June 28, 1996) did not account for [the beneficiary's] employment history," and cited the FCSA evaluation as being a more accurate representation of the beneficiary's credentials. The record does not contain a copy of the June 1996 evaluation, but it does contain two copies of the December 1996 FCSA evaluation. In this February 2000 letter, counsel did not in any way question the accuracy of the FCSA evaluation; indeed, counsel specifically deemed it to be an improvement over the purported earlier evaluation.

The director denied the petition, stating that the position requires an actual baccalaureate degree, rather than the equivalent of such a degree through a combination of education and experience.

On appeal, counsel states:

Shenyang Institute of Aeronautical Engineering . . . was established in 1952. . . . [The beneficiary] attended the institute in 1961 and graduated there in 1965. Shortly thereafter the school was closed as China was going through the Cultural Revolution. The school was re-opened in 1978.

Counsel offers no documentation to support this version of the school's history. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaignena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980). The credential evaluation from December 1996, which counsel had not only submitted, but had re-submitted, states that the institute "lost its college status in 1961." Having previously misstated the beneficiary's graduation date as 1959, thus avoiding the 1961 loss

of college status, counsel now contends that the college remained a college until after the beneficiary's graduation. Counsel's own statements regarding the history of the institute clearly lack consistency and credibility, and carry no weight whatsoever.

Counsel refers to the FCSA evaluation:

Foreign Credentials Service of America evaluated [the beneficiary's] degree from Shenyang Institute of Aeronautical Engineering, and indicated that it is equivalent to a vocation high school in the United States. This is clearly erroneous because Shenyang Institute of Aeronautical Engineering is a college with both graduate and undergraduate programs.

That same evaluation indicated that the institute regained its college status in 1978, and therefore the observation that the institute now "is a college" does not resolve this issue. Counsel offers no explanation at all as to why, if the FCSA evaluation "is erroneous," counsel nevertheless saw fit to submit that evaluation on two separate occasions, without any reference at the time to the supposed errors it contained.

On appeal, the petitioner submits a new evaluation from Worldwide Education Evaluators, Inc., which states in part:

[The beneficiary] has a Transcript and a Diploma from the Shenyang Aerospace Industrial Institute. . . .

This is a four year program of study equivalent to a Bachelor's degree in Aerospace Engineering from a regionally accredited University in the United States.
. . . .

He has a Transcript and a Diploma from the Department of Electronics of the Shanghai Second College of Education . . . which attest that he successfully completed the requirements for a three year part-time undergraduate program of study in Electronics from September 1983 to July 1986. . . .

This represents the completion of an additional undergraduate major in Electronics from a regionally accredited University in the United States.

The new evaluation makes no mention of Shenyang Institute's loss of college status from 1961 to 1978, which is highly relevant given that the beneficiary attended between 1961 and 1965. This omission makes the new evaluation appear to be less reliable, rather than more reliable, than the earlier FCSA evaluation it seeks to replace. The reference to "completion of an additional undergraduate major" does not establish or imply the awarding of an actual baccalaureate degree. A bachelor's degree is normally the

product of four years of full-time study, rather than "a three year part-time undergraduate program of study."

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. See Matter of Sea, Inc., 19 I&N Dec. 817 (Commr. 1988).

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

As discussed above, counsel's own assertions regarding the Shenyang Institute lack authority, consistency, and credibility, and the newly submitted credential evaluation fails to address the critical factor of Shenyang Institute's loss of status. The petitioner's three years of part-time undergraduate education have not been found by any evaluator to have yielded a baccalaureate-level degree. For these reasons, we cannot conclude that the petitioner holds any single degree that could be considered to be the equivalent of a U.S. bachelor's degree.

The relevant regulations at 204.5(k)(3), cited above, require an official academic record of a bachelor's degree. While experience can substitute for a master's degree, there is no comparable provision with regard to the underlying bachelor's degree. If the beneficiary does not actually hold a bachelor's degree (or an equivalent degree from a foreign institution), the beneficiary cannot qualify as a member of the professions holding an advanced degree, regardless of how many years of experience or lesser education he has accumulated.

The petitioner has not established that the beneficiary holds any single degree which is comparable to a U.S. baccalaureate degree. The petitioner has not resolved the issues of credibility which inevitably arise not only from the submission of two contradictory educational evaluations, but from counsel's conflicting assessments of the reliability of the FCSA evaluation. Therefore, the petitioner has not established that the beneficiary meets the minimum requirements for the position, as set forth on the labor certification.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed.