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U.S. Department of Homeland Security
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
425 Eye Street N.W.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

JUN 12 2003

File: EAC 00 256 50274 Office: VERMONT SERVICE CENTER

Date:

IN RE: Petitioner:
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:

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.


Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an information system technology company that seeks to employ the beneficiary as a programmer/analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the petitioner has not shown that the beneficiary possesses a master's degree or its equivalent.

On appeal, counsel asserts that the director failed to consider the beneficiary's post-baccalaureate employment experience.

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. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(2).

The position requires a master's degree or the equivalent in a computer-related field of study. Documents in the record show that the beneficiary earned a bachelor's degree from Osmania University in 1989, followed by an "Honours Diploma in Systems Management" from the National Institute of Information Technology in 1992. The beneficiary claims a second post-graduate diploma, but the record contains no documentation of it, and an educational evaluation (discussed below) makes no mention of it. The petitioner has not explicitly claimed that these diplomas are equivalent to academic degrees above the baccalaureate level.

In the initial submission, the petitioner asserted that the beneficiary "has over 7 years of professional experience in the computer industry." The beneficiary, on his Form ETA-750B Statement of Qualifications, claimed the following computer-related employment:

Onward Technologies, Ltd.	11/1991 – 3/1995
Alshaya Trading Corp.	4/1995 – 2/1998
Indigo (RDBMS)	2/1998 – 12/1999
The petitioning company	1/2000 – present

The petition's filing date (the date that the Department of Labor accepted the application for labor certification) is June 19, 2000. The petitioner must show that the beneficiary had at least five years of qualifying post-baccalaureate experience prior to that date. The regulation at 8 C.F.R. § 204.5(k)(3)(i)(B) requires "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 initial submission contained no documentation from any of the beneficiary's previous employers.

The director instructed the petitioner to submit “an advisory evaluation of the beneficiary’s credentials . . . [in order] to determine the level and major field of educational attainment.” In response, the petitioner has submitted an independent evaluation of the beneficiary’s credentials. The evaluator states that the petitioner’s post-baccalaureate course work amounts to “the equivalent of two-year graduate study in the United States.” The evaluator did not indicate that the petitioner’s “graduate study” had yielded anything that would be recognized as a degree.

The director denied the petition, stating that two years of graduate study is not the automatic equivalent of a master’s degree. On appeal, counsel contests this finding but offers no evidence in rebuttal. Counsel also states that the director “failed to notice [the beneficiary’s] 9 years progressive experience after obtaining a bachelor degree.” Prior to the filing of the appeal, the petitioner had never submitted any evidence at all to confirm the beneficiary’s prior employment experience. Because the petitioner had failed to submit the evidence required by 8 C.F.R. § 204.5(k)(3)(i)(B), the director cannot reasonably be faulted for failing to take the petitioner’s unsubstantiated claim into consideration. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

On appeal, for the first time, the petitioner submits copies of two letters to establish the petitioner’s prior employment experience. Both letters are dated August 7, 2001, eight days before the August 15 filing of the appeal. One letter, from P.S. Siva Sridhar, director of Indigo (RDBMS), Hyderabad, India, states that the beneficiary worked for the company from “February ‘ 1998 to December ‘ 1999.” The other letter, from Venkata S.S. Raju Chiluvuri of Redwood City, California, reads in part:

This is to certify that [the beneficiary] has worked with me as “Sr. Programmer/Analyst” in ONWARD TECHNOLOGIES LTD., Hyderabad, India for the following period:

November ‘ 1991 to March’ 1995.

We note some peculiar similarities between the two letters, especially the gratuitous use of apostrophes in the dates (e.g., “November ‘ 1991”). Both letters also begin with the salutation “**TO WHOMSOEVER IT MAY CONCERN**,” in bold, centered type. Although the two letters were supposedly written thousands of miles apart, one in California and the other in India, they were both included as pages 2 and 3 of a three-page fax transmission at 2:08 a.m. on August 10, 2001. It is not clear who sent the fax, or whether the fax was sent to the petitioner, to the beneficiary, or to counsel; the cover page is missing, and the “From” header at the top of each page is blank.

Apart from the provenance of the fax copies, the letter from Venkata S.S. Raju Chiluvuri is not a letter from a current or former employer as required by 8 C.F.R. § 204.5(k)(3)(i)(B). Mr. Chiluvuri is in Redwood City, thousands of miles from the site of the claimed employment in Hyderabad, and he provides no evidence that he was an official of Onward Technologies during

the early 1990s. He simply claims that the beneficiary “has worked with me.” A letter from a claimed former co-worker is not a letter from a former employer.

The regulation at 8 C.F.R. § 103.2(b)(2)(i) states, in pertinent part:

The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document . . . does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence . . . pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

In this instance, the required evidence is a letter from the former employer. Secondary evidence might consist of contemporaneous documentation such as pay stubs or tax documents that identify the employer. The petitioner has not explained or established the unavailability or nonexistence of this primary or secondary evidence, and the petitioner has submitted only a single unsworn, unaffirmed letter rather than the required two sworn or affirmed affidavits. Pursuant to the above regulation, the petitioner has not met its burden of proof with regard to the beneficiary’s claimed post-baccalaureate experience. The director, given the evidence available, did not err in finding that the petitioner had failed to establish the beneficiary’s eligibility.

The petitioner has not shown that the petitioner’s post-graduate education is equivalent to an actual master’s degree (rather than a given period of graduate-level training), and the petitioner has not sufficiently documented the beneficiary’s claimed post-baccalaureate experience. The petitioner has failed to establish that the beneficiary qualifies for classification as a member of the professions holding an advanced degree or its equivalent.

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. Accordingly, the decision of the director will not be disturbed and the appeal will be dismissed.

ORDER: The appeal is dismissed.