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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, DC 20536



MAY 08 2003

File: EAC-02-036-56051

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 visa petition was denied by the Director, Vermont 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's bachelor's degree is in the field specified on the Form ETA-750.

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.

As required by 8 CFR 204.5(k)(4)(i), 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 of "Application Implementation Specialist" are a Master of Science and one year of experience. Under "Major Field of Study" for the degree, the labor certification states, "Mechanical Engineering or related." Under "Related Occupation" for the experience, the labor certification states, "Appl. Impl. Specialist or related with ability." Under box 15, the labor certification provides:

#14 cont.:

[T]o use PL/SQL, SAP R/3-SD module, Oracle, Visual Basic 6.0.

Must have ERP consultant experience.

Travel required.

The petitioner initially submitted the beneficiary's Bachelor of Engineering degree in Mechanical Engineering issued by Anna University in April 1993, a Post-Graduate Diploma in Management issued by the S. P. Jain Institute of Management and Research, and an evaluation of these degrees

by Foreign Credential Evaluations, Inc. The evaluation provides that the first degree is “equivalent to the degree, Bachelor of Science in Mechanical Engineering, from a regionally accredited university in the United States.” The evaluation further states that the petitioner’s Post-Graduate Diploma in Management “which when taken with the degree cited above, is equivalent to the degree, Bachelor of Science in Mechanical Engineering and in Management, from a regionally accredited university in the United States.”

On February 2, 2002, the director requested evidence of five years of progressive experience “because we are not persuaded that the beneficiary has an actual master’s degree in Mechanical Engineering or a related field.” In response, counsel asserted, “the beneficiary has the equivalent of a Master of Business Administration in International Business. (See attached credential evaluation.)” Counsel further asserted that the beneficiary’s alleged MBA was a related degree because it included courses in computers, quantitative methods, operations management, management information systems, and financial management, among others. Counsel asserted that business is a related field given the job description on the labor certification, which includes an understanding of business planning and scheduling concepts. The petitioner submitted a letter from an evaluation officer of the Association of Indian Universities to a professor at S. P. Jain Institute of Management and Research advising that the association recognizes a postgraduate diploma from the institute as equivalent to an “MBA degree of an Indian University.” Finally, the petitioner submitted a new evaluation from Foreign Credential Evaluations, Inc. This evaluation provides:

[The Post-Graduate Diploma in Management] represents two years of graduate study in Business Administration, which is recognized by the Association of Indian Universities as equivalent to the degree, Master of Business Administration in International Business. It is equivalent to the degree, Master of Business Administration in International Business, from a regionally accredited university in the United States.

The evaluation is signed by the same individual who signed the first evaluation, President Beth Cotter, and provides no explanation for this significantly different evaluation.

The director did not contest that the petitioner is an advanced degree professional. Rather, the director concluded that the petitioner’s education was not in the field specified on the labor certification. The director noted the lack of any courses containing “mechanical engineering” in their titles.

On appeal, counsel argues that the position of Application Implementation Specialist requires knowledge of engineering and business, thus, the beneficiary’s education “is not only sufficient, but ideal.” Counsel further asserts that an MBA is a very common degree for engineers. Counsel further asserts that the petitioner’s failure to list an MBA on the labor certification application “is merely the result of the arbitrary layout of the form, providing limited space in which the employer may respond.” Subsequently, counsel expands on this assertion as follows:

In Block 14, the form has one line in which the petitioner must state the college degree required. On the next line, the petitioner must state the major field of study.

The layout of these boxes does not lend itself to situations such as this one in which the master's degree may be in a field other than the bachelor's degree.

Counsel further asserts that the petitioner used the abbreviation "M.S." to indicate any degree beyond a bachelor's degree and that the petitioner was limited by a single line to provide the field, which was insufficient space to specify that only the bachelor's degree need be in engineering.

Counsel cites several non-precedent decisions from this office holding that a labor certification application must be "read as a whole." Counsel notes that given the job description on the labor certification application, the application "as a whole" permits the conclusion that an MBA is a related field.

To determine whether a beneficiary is eligible for an employment-based immigrant visa supported by a labor certification, the Service must ascertain whether the alien is in fact qualified for the certified job. The Service 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 Service must look to the job offer portion of the labor certification to determine the required qualifications for the position; the Service 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).

While we will read the labor certification application as a whole, that reading does not lead us to conclude that an MBA is a related degree. In Box 14 the petitioner indicated that an "M.S." was required. The petitioner did not indicate that an equivalent degree or a bachelor's degree plus five years progressive experience would suffice. In that same box, the petitioner indicated that the major field of study was "Mechanical Engineering or related." The only reasonable interpretation of this information is that the advanced degree must be in Mechanical Engineering or a field related to engineering. In Box 15, indicated by the petitioner as a continuation of Box 14, the petitioner did not indicate that an equivalent degree was acceptable or that "business" was a related field to engineering. Nor did the petitioner clarify that the "M.S." in engineering or a related field requirement could be met by an unrelated advanced degree if the undergraduate degree was in a related field. Finally, that the job description requires a "business understanding of planning and scheduling concepts" does not change our reading of the labor certification application. We note that the labor certification application also requires one year of experience in the job, from which business understanding could be obtained. Nothing in the labor certification reflects that the advanced degree education requirement can be met with a degree in business.

Contrary to counsel's assertion, the labor certification application provides sufficient space for any clarifications. In box 14, the petitioner indicated "Mechanical Engineering or related." The box includes plenty of space to include "business." Moreover, Box 15 allows the petitioner to add any "other special requirements." The petitioner understood this, indicating in Box 15 that the information was a continuation of Box 14. This is a large box and the petitioner included several

computer applications in which the employee must have experience. The Box is less than half-full, with sufficient space to clarify that the advanced degree required in Box 14 need not be in the field specified in Box 14. Moreover, there are official "addendum" forms to the Form ETA-750 that the petitioner could have used to specify that the major field of study listed in Box 14 did not apply to the degree required in Box 14.

Further, we do not find that the beneficiary's degree itself was sufficiently related to mechanical engineering. The transcript reflects an introduction to computers course and one Management Information Systems course. The record does not support counsel's assertion that operations management or financial management course work is related to mechanical engineering. Two computer courses in five trimesters are not indicative that the degree is related to an advanced degree in mechanical engineering.

Finally, the record is inconsistent regarding whether the petitioner's foreign degree is even equivalent to an MBA from an accredited U.S. university. *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.

The initial evaluation indicated that the beneficiary's credentials were comparable to a second undergraduate degree in business. The second evaluation, from the same individual, provides no explanation for her different conclusion. The evaluation from the evaluation officer of the Association of Indian Universities only indicates that the petitioner's degree is equivalent to an Indian MBA. 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, 591-92 (BIA 1988).

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.

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.