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U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

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U.S. Citizenship
and Immigration
Services

RB

[Redacted]

FILE:

[Redacted]

Office: VERMONT SERVICE CENTER

Date: JUN 28 2004

IN RE:

Petitioner:

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)

ON BEHALF OF PETITIONER:

[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann
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 The decision of the director will be withdrawn and the petition will be remanded for further action and consideration.

The record reflects that the petition was filed on July 18, 2003, listing [REDACTED] as the petitioner under Part 1 of Form I-140.¹ The petition, however, was signed not by a representative from Global Technology Group, but, rather [REDACTED] Director of Human Resources [REDACTED]. The regulation at 8 C.F.R. § 103.2(a)(2) states: "An applicant or petitioner must sign his or her application or petition." Therefore, Vision Technology Group shall be considered to be the petitioner.

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 or an alien of exceptional ability. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined the petitioner had not established that it had the financial ability to pay the beneficiary's proffered wage.

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

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

¹ Counsel states that this was the result of typographical error under Part 1 of the I-140 form. We concur. In addition to the fact that Part 8 of the petition was signed by an official from [REDACTED] all of the supporting documentation accompanying the petition, including the labor certification, counsel's cover letter (June 11, 2003), and a letter from [REDACTED] dated May 28, 2003, indicates that the petitioning entity is Vision Technology Group, Inc. rather than [REDACTED].

Eligibility in this matter hinges on the petitioner's ability to pay the wage offered as of the petition's priority date, which is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. 8 C.F.R. § 204.5(d). The petition's priority date in this instance is May 11, 2000. The beneficiary's annual salary as stated on the labor certification is \$75,000 per year.

On August 28, 2003, the director issued a Request for Evidence instructing the petitioner to submit evidence of its ability to pay the proffered wage in the form of federal tax returns, copies of annual reports, or audited financial statements dated from May 11, 2000 to the present.

In response, the petitioner submitted complete copies of IRS Form 1120, U.S. Corporation Income Tax Return, for the tax years ending 2000, 2001, and 2002. The tax returns reflect a taxable income of \$118,983 in 2000, \$226,970 in 2001, and \$46,676 in 2002. The petitioner's response also included the beneficiary's Form W-2 for 2001 reflecting earnings of \$69,774. We find that the petitioner's net income figure from its tax returns for 2000 and 2001 is adequate to demonstrate its ability to pay the proffered wage for those two years.

Because the petitioner's net income for 2002 is less than the proffered wage, we will review the company's net current assets for the tax year ending 2002. Net current assets are the difference between the petitioner's current assets and current liabilities.² Net current assets identify the amount of "liquidity" that the petitioner has as of the date of filing and is the amount of cash or cash equivalents that would be available to pay the proffered wage during the year covered by the tax return. As long as CIS (Citizenship and Immigration Services) is satisfied that the petitioner's current assets are sufficiently "liquid" or convertible to cash or cash equivalents, then the petitioner's net current assets may be considered in assessing the prospective employer's ability to pay the proffered wage.

According to the petitioner's 2002 IRS Form 1120 balance sheet (Schedule L), the petitioner had current assets in the amount of \$327,556. The Schedule L reflected total current liabilities in the amount of \$156,006. It is apparent that the petitioner could pay a proffered wage of \$75,000 a year out of its net current assets of \$171,550. Therefore, we find that the evidence presented is adequate to establish the petitioner has the ability to pay the proffered salary. The petitioner has thus overcome the grounds for denial cited in the director's decision.

Beyond the decision of the director, however, we find that it has not been established that the beneficiary qualifies as a professional holding an advanced degree.

The regulation at 8 C.F.R. § 204.5(k)(2) states:

² A petitioner's "current assets" consist of cash and assets that are reasonably expected to be converted to cash or cash equivalents within one year from the date of the balance sheet. As reflected on the petitioner's balance sheets, current assets include, but are not limited to, the following: cash; accounts receivable; inventories; pre-paid expenses; certain marketable securities, loans, and promissory notes; and other identified current assets. A petitioner's "current liabilities" are debts that must be paid within one year from the date of the balance sheet. Examples of current liabilities include, but are not limited to, the petitioner's accounts payable; payroll taxes due; certain loans and promissory notes that are payable in less than one year; and any other identified current liabilities.

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

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

(i) 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.

Counsel asserts that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree, and at least five years of progressive post-baccalaureate experience in the specialty. We agree with counsel that the letters from the beneficiary's employers demonstrate that the beneficiary has at least five years of progressive post-baccalaureate experience in his specialty. The issue to be determined here is whether the beneficiary holds "a United States baccalaureate degree or a foreign equivalent degree."

The requirement of a "foreign equivalent degree" at 8 C.F.R. § 204.5(k) indicates that the alien must possess a single degree (rather than a combination of degrees) that is, standing alone, equivalent to a U.S. baccalaureate. A United States baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

The record contains a Bachelor of Science degree from the University of Bombay stating that the beneficiary "passed the Bachelor of Science (Three-Year Integrated Course) degree examination." Also submitted were a Post Graduate Diploma in Computer Hardware Engineering from the Datamatics Institute of Management and a Master of Science degree from the Maharaja Sayajirao University of Baroda.

The record also includes an academic equivalency evaluation from Trustforte Corporation stating:

The completion by [the beneficiary] of the Master of Science program is analogous to the completion of a bachelor's-level concentration in Mathematics at an accredited U.S. college or university.

By completing a Master of Science degree in Mathematics at the Maharaja Sayajirao University of Baroda, after bachelor's studies in Physics at the University of Bombay and one year of concentrated post-secondary studies in Computer Hardware Engineering at the Datamatics Institute of Management, [the

beneficiary] fulfilled a bachelor's level degree, with academic major specializations in Computer Science, Mathematics, Physics, and has completed one year of required coursework leading toward a master's-level degree in Mathematics. Thus, the nature of the courses and credit hours involved, considered together with his prior bachelor's and master's studies, indicate that [the beneficiary] attained the equivalent of a Bachelor of Science degree, with a concentration in Computer Science, Mathematics, and Physics, and one year of coursework leading to a Master of Science degree in Mathematics from an accredited U.S. institution of higher learning.

Based on the beneficiary's combined degrees and diploma in three completely different fields of study (physics, computer science and mathematics), the evaluator from Trustforte Corporation concluded that the beneficiary "attained the equivalent of a Bachelor of Science degree, with a concentration in Computer Science, Mathematics, and Physics...from an accredited U.S. institution of higher education."

There is, however, no statute, regulation or standing precedent that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. If the beneficiary does not actually hold a U.S. baccalaureate degree (or a full equivalent degree from a foreign institution), the beneficiary cannot qualify as a member of the professions holding an advanced degree. CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an opinion 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 (Comm., 1988).

Based on the evidence presented, the petitioner has not established that the beneficiary qualifies as a professional holding an advanced degree. Therefore, the beneficiary is not eligible for the classification sought. The director, however, has not informed the petitioner of this deficiency in the notice of denial. For this reason, we conclude that the best course of action is to remand this matter to the director for further action.

Accordingly, this matter will be remanded for the purpose of a new decision. The director must afford the petitioner reasonable time to address the above deficiency and to obtain any further evidence which the director may deem necessary. Upon receipt of all the evidence, the director will review the entire record and enter a new decision. As always in these proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The director's decision is withdrawn. The petition is remanded to the director for further action in accordance with the foregoing and entry of a new decision, which, if adverse to the petitioner, is to be certified to the Administrative Appeals Office for review.