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U.S. Department of Justice
Immigration and Naturalization Service

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

PUBLIC COPY



File:



Office: VERMONT SERVICE CENTER

Date: 12 DEC 2002

IN RE: Petitioner:
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:



**Identifying data deleted to
prevent identity misappropriation
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 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 that 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a computer consulting services company. It seeks to employ the beneficiary permanently as an oracle database administrator. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's filing date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is January 19, 2000.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of oracle database administrator required a Bachelor's degree or equivalent in Computer Science or Engineering or Science, and three years of experience in the job offered, or three years of experience in the related occupation of database developer or systems administrator. A Master's degree + 1 year experience could be substituted for the Bachelor's degree and three years of experience.

The director determined that the petitioner had not established that the beneficiary had the required Bachelor's degree and denied the petition. The director noted that:

Initially you submitted an evaluation which states that the beneficiary "was awarded a Bachelor of Science in Commerce from the University of Delhi, India in 1992." The evaluator adds, "this is equivalent to a three-year program of academic studies in Business and transferable to an accredited university in the United States."

In response to the Service's memo of December 12, 2001 advising you of these statements of the evaluator, you submitted a new evaluation by a different evaluation service stating that "the beneficiary's bachelor's degree is considered to be academically equivalent to a Bachelor of Science with a second major in computer science as awarded by an accredited United States university." The evaluator does not explain how that determination was reached. The evaluator refers to the beneficiary's 1-1/2 years of computer studies as being "academically equivalent to a second major in computer science as required by a United States university." However, the latter studies were not part of the beneficiary's college program which led to his three-year degree. The honors diploma in systems management which resulted from his "1-1/2 years of computer studies" was awarded 5 years after he earned his college three-year degree.

On appeal, counsel argues that:

In response to the Service's memo of December 12, 2001, this office has forwarded another credentials evaluation from Dr. Terry Erb of Washington Evaluation Service. This office noticed the error made by MEI Services Inc., therefore another foreign credential evaluation was sought. Dr. Erb has determined that Beneficiary's independent Bachelor degree in Science is considered to be academically equivalent to a full Bachelor of Science as awarded by an accredited United States university.

The record contains an educational evaluation from Multinational Education & Information Services, Inc., which states that the beneficiary was awarded a degree of Bachelor of Science in Commerce from the University of Delhi, India in 1992, and that this is equivalent to a three-year program of academic studies in Business and transferable to an accredited university in the United States.

The educational evaluation submitted on appeal from Washington Evaluation Service states that the beneficiary has the equivalent of a Bachelor Of Science degree with a second major in Computer Science.

Counsel's assertions are not persuasive. The petitioner's reliance on the educational evaluation is misplaced since the evaluator states that the bachelor of science degree is the "equivalent" to a degree with a second major in computer science due to the year and a half honors course he took in systems management.

The education evaluation is also questionable in that it utilizes courses from outside of the beneficiary's baccalaureate course of studies to equate his bachelor's degree with a dual major degree in computer science. Although an alien's graduate studies might be viewed as the equivalent or as substantially related to a graduate

degree in another field, attributing the graduate classes to a bachelor's degree that was earned earlier is questionable. The Service may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. Matter of Caron International, 19 I&N Dec. 791 (Comm., 1988).

The issue here is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary had a bachelor's degree or equivalent in Computer Science, Engineering or Science on January 19, 2000. Therefore, the petition may not be approved.

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.

ORDER: The appeal is dismissed.