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U.S. Department of Justice
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
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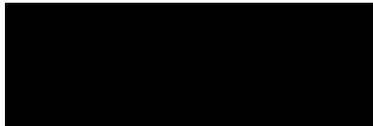


File:  Office: VERMONT SERVICE CENTER Date: 12 DEC 2002

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 clearly unwarranted
invasion of personal privacy**

INSTRUCTIONS:

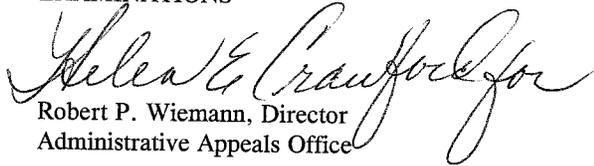
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

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 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, Director
Administrative Appeals Office

DISCUSSION: The immigrant 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 software design and development company. It seeks to employ the beneficiary as a unix systems administrator. Accordingly, the petitioner filed the current petition to classify the beneficiary as a professional worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i). The director determined that the beneficiary did not possess the required educational background, as stated on the Form ETA-750, Application for Alien Employment Certification.

On appeal, the petitioner states that the director misinterpreted the law and facts in finding that the beneficiary did not possess the required level of education.

Section 203(b)(3) of the Immigration and Nationality Act (the Act) states:

(A) In general. - Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers. - Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

(ii) Professionals. - Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

As required by 8 CFR 204.5(1)(3)(i), the petitioner has 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 a bachelor of science degree in computer science or equivalent is the minimum level of education required for a worker to perform the job duties in a satisfactory manner.

The beneficiary in this matter possesses a bachelor of arts degree from the University of Delhi. The petitioner also submitted a credentials evaluation from Multinational Education & Information Services, Inc., which states that the degree is equal to a three-year program of academic studies in Arts from an accredited

university in the United States. The evaluation further states that the beneficiary was awarded a Post-Graduate Diploma in Marketing Management from the Institute of Management Technology, India in 1997.

After noting that "the evaluator arrives at this conclusion by combining the beneficiary's Bachelor of Arts degree (which equates to three years of academic study), with his two years of study at NIIT (which appears to be a training center rather than an accredited degree granting institution), and one year of coursework from the National Institute of Management Technology," the director denied the petition. The director found that the beneficiary did not possess a bachelor's degree in computer science or equivalent as required by the labor certification.

On appeal, the petitioner argues that the director incorrectly reviewed the petition as requesting classification as a professional, pursuant to section 203(b)(3)(A)(ii), rather than a skilled worker.

The petitioner's assertion is not persuasive. As noted previously, the labor certification, at block 14, specifically requires a four-year bachelor's degree as the minimum level of education needed to perform the job duties. The labor certification does not provide for a degree equivalent as the minimum level of education, regardless of whether the equivalency is based on work experience, training, or a combination of lesser degrees. The beneficiary has not completed the required four-year degree.

The 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 any way questionable, it may be discounted or given less weight. Matter of Sea, Inc., 19 I&N Dec. 817, 820 (Comm., 1988).

Despite counsel's arguments, the Service will not accept a degree equivalency when a labor certification plainly and expressly requires a candidate with a specific degree. To determine whether a beneficiary is eligible for a third preference immigrant visa, the Service must ascertain whether the alien is in fact qualified for the certified job. 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). Here, block 14 of the Form ETA-750 plainly states that a four-year bachelor's degree is the minimum level of education required to adequately perform the certified job. As the beneficiary has not earned a bachelor's degree, the beneficiary does not qualify for the certified position.

The beneficiary does not qualify for the proffered position as he does not possess the specific degree required by the labor certification, a four-year bachelor's degree in computer science or equivalent. Accordingly, the beneficiary is not eligible for classification under Section 203(b)(3) as either a skilled worker or a professional, based on the current labor certification.

The burden of proving eligibility for the benefit sought remains entirely 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.