

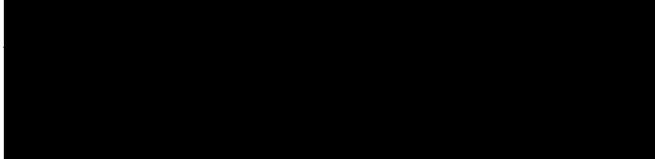


BC

U.S. Department of Justice  
Immigration and Naturalization Service

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

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



File: EAC 00 202 52959 Office: VERMONT SERVICE CENTER Date: DEC 17 2002

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

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:  
[Redacted]

PUBLIC COPY

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 consulting firm in technology and management information systems. It seeks to employ the beneficiary permanently in the United States as an Oracle financial consultant. 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 as of the petition's priority date.

On appeal, counsel submits a brief. These proceedings put in issue whether the beneficiary met the petitioner's qualifications for the position.

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.

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 had all the training, education, and experience specified on the labor certification as of the petition's priority date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this case, the priority date is December 10, 1999.

The Application for Alien Employment Certification (Form ETA 750) indicated in item 14 that the position of Oracle financial consultant required a four (4) year college degree of Bachelor of Science or Foreign Academic Equivalent with the major field of study in computer science or related technical field and one (1) year of experience in the job offered or in the related occupation of programmer/analyst and applications engineer.

The director determined that the degree of Master in Business Administration and pertinent transcripts did not show any computer science courses that would qualify the beneficiary to perform the

tasks outlined on the Form ETA 750. Accordingly, the director denied the petition.

On appeal, counsel argues that:

... We offer that the **beneficiary's Master's degree is a technical degree insofar as the position is concerned.** That is why the ETA-750A requires a degree in a related "technical" not "technology" field... It is commonplace, and in fact preferable, for U.S. employers to hire individuals with MBAs for business related jobs that require a technical proficiency. Relative to this, the Service is instructed to look to the combination of the beneficiary's Master's degree, certifications in Oracle Fixed Assets, Oracle Financials, Oracle Developer 1000, UNIX and Applied Information Technology and her considerable experience as far surpassing the minimum requirement of a Bachelor's degree in "computer science or a related technical field."

... He [sic] more than 5 years of experience at the time the ETA-750A was filed exceeds [sic] the 1 years [sic] experience required for the position. He [sic] certifications in various Oracle and other technologies further supports [sic] her qualifications...

Counsel's contentions are not persuasive. In particular, the educational evaluation simply confirms the beneficiary's equivalent of a Master's degree in business administration. The issue is whether the beneficiary met all of the requirements stated by the petitioner for a degree of Bachelor of Science in computer science or a related technical field. See block #14 of Form ETA 750A.

Counsel cites no evidence or authority for his instruction to the Service to look to several certifications and experience to substitute for a degree in computer science or a related technical field. The record lacks any evaluation of the beneficiary's certifications, experience, and transcripts. The assertions and instructions of counsel do not constitute evidence. Matter of Obaigbena, 19 I & N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I & N Dec. 503, 506 (BIA 1980). Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See Matter of Treasure Craft of California, 14 I & N Dec. 190 (Reg. Comm. 1972). The evidence certainly does not support an inquiry into the difference, if any, between technical and technological

fields.

The petitioner has not established that the beneficiary had a degree of Bachelor of Science in computer science or a related technical field on the priority date, December 10, 1999. 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 met that burden.

**ORDER:** The appeal is dismissed.