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U.S. Department of Justice

Immigration and Naturalization Service

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

[Redacted]

File: EAC 01 135 53186

Office: VERMONT SERVICE CENTER

Date: 08 JUL 2002

IN RE: Petitioner:  
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 which 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 which 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 which 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 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 software development company. It seeks to employ the beneficiary permanently as a programmer analyst. 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 May 21, 1999.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of programmer analyst required a Bachelor of Science degree in computer science, engineering related field/ equivalent, and five years of experience in the job offered.

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

On appeal, counsel argues that:

The Immigration and Naturalization Service is justifying the denial of an Immigrant Petition by stating that the word "equivalent" should have been placed in Form ETA 750 Part A in one location, whereas it was actually placed in a different location less than one half of an inch away. It is our contention that the physical location of the word "equivalent" is meaningless as the Service is arguing. As discussed below with further detail, the location of the word "equivalent" in Form ETA 750 Part A

is less relevant than the Service argues, and that its placement in the ad is more important since it is the ad rather than the form that helps potential U.S. workers apply for the position during the recruitment stage.

Counsel's argument is not persuasive. As stated by the director:

Form ETA 750, Part A, Section 14 specifies that the minimum educational requirement for the proffered position is a "Bachelor of Science" degree. It does not state "Bachelor of Science or equivalent." With regard to the field of study, Part A, Section 14 of Form ETA indicates the major field of study is "Comp. Sci., eng rel field/equiv." In this case, the equivalency refers to the field of study, not to the degree. The degree must be a Bachelor of Science degree, but the major filed may be Computer Science, engineering related or the equivalent.

The record contains an educational evaluation from the Foundation for International Services, Inc., which states that the beneficiary has the equivalent of three years of university-level credit from an accredited college or university in the United States, and has, as a result of her progressively more responsible employment experiences (3 years of experience= 1 year of university-level credit), an educational background the equivalent of an individual with a Bachelor's degree in Computer Science from an accredited university in the United States.

Counsel states that the petitioner has submitted documentation to establish that the beneficiary had a combination of education and experience to meet the requirements set forth in the Form ETA 750 prior to the filing date of the petition. The three year experience for one year of education rule used in the evaluation, however, is applicable to nonimmigrant H1B petitions, not immigrant petitions. The beneficiary is required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

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 in computer science or engineering on May 21, 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 sustained that burden.

**ORDER:** The appeal is dismissed.