



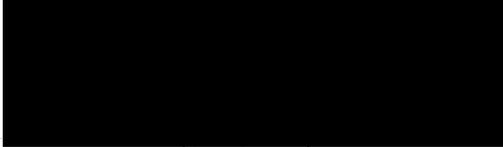
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U.S. Department of Justice

Immigration and Naturalization Service

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



File: WAC 00 197 52906 Office: CALIFORNIA SERVICE CENTER

Date: MAR 29 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:



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, Director
Administrative Appeals Office

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

The petitioner is a brewery. It seeks to employ the beneficiary permanently as a systems engineer. 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 November 23, 1999.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of systems engineer required a Bachelor's degree in Computer Science, and either two years of experience in the job offered, or two years of experience in the related occupation of database design and/or systems analysis, or [a] related [field].

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 the beneficiary had a general bachelor of science degree with no major.

On appeal, counsel argues that:

The transcripts submitted with the original I-140 and [the beneficiary's] Bachelor of Science degree indicate that he has a general degree with "no major." At the time [the beneficiary] was enrolled at Mount Saint Vincent University, it was not necessary to declare a major. However, a review of his transcript will show

that 1/3 of the classes [the beneficiary] enrolled in and passed were in the Computer Science Department. Major U.S. universities today require 120 credits to graduate of which 30 must be in the individual's declared major. Therefore, a U.S. major requires 25% of the individual's courses be in the field. In [the beneficiary's case, 33% of his courses were in computer science.

The record contains an educational evaluation from the Academic Credential Evaluation Institute, Inc., which states that the "studies completed and credential earned represent a level of learning equivalent to the Bachelor of Science (concentration in Computer Science) at regionally accredited institutions of higher education in the United States."

Service regulations require that evidence of a bachelor's degree shall be in the form of an official college or university record showing the date the degree was awarded and the area of concentration of study. 8 CFR 204.5(1)(3)(ii)(C). The official academic record provided by Mount Saint Vincent University states that the beneficiary has a bachelor of science degree with no major.

The Form ETA 750 requires the beneficiary to have a bachelor's degree in Computer Science, not a bachelor's degree with no major, or with a concentration in Computer Science. 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 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.