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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

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



APR 09 2003

File: EAC 02 009 52082 Office: Vermont Service Center

Date:

IN RE: Petitioner:
Beneficiary:



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

ON 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 Bureau of Citizenship and Immigration Services (Bureau) 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.

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 Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a travel agency. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director denied the petition because he determined that the petitioner had not established that the beneficiary has the qualifications for the job as stated by the petitioner on the Form ETA 750 Application for Alien Employment Certification.

On appeal, counsel submits a brief.

Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3), 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 or unskilled labor, 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 corresponding 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 priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is March 14, 2000.

The Form ETA 750 states that the proffered position requires a bachelor of science degree in computer science, engineering, or related field/equivalent. With the petition, counsel submitted an educational evaluation, dated June 5, 1998, from an associate professor at Florida International University. That evaluation states that, using the three-for-one formula, the beneficiary's equivalent of one year of undergraduate study plus his over nine years of experience in the computer information systems field yields the equivalent of a bachelors degree in computer information systems.

Because the petitioner had not submitted evidence sufficient to show that the beneficiary possesses a bachelor's degree as the Form ETA 705 requires, the Vermont Service Center issued a Request for Evidence in this matter. The petitioner was asked to submit evidence of the requisite degree.

In that request, the petitioner was cautioned that 8 C.F.R. § 204.5(l)(3)(ii)(C) does not permit substitution of experience for education. The petitioner was told that, if an educational evaluation was to be relied upon in this matter, it must consider formal education only, not practical experience; and must state whether the college credit was post-secondary, that is, whether the beneficiary previously earned a high school degree or an equivalent foreign degree.

In response, counsel asserted, and provided precedent to support, that experience may be substituted for education in a petition proceeding.

On May 31, 2002, the Director, Vermont Service Center, issued a decision in this proceeding. The director found each of the precedent decisions cited by the petitioner to be distinguishable from the instant case. The director noted that the certification issued in this matter states that the position requires a bachelor's degree in computer science, engineering, or a related field or the equivalent.

The director further noted that, although H1B nonimmigrant regulations allow for substitution of work experience for certain college course work, 8 C.F.R. § 204.5(l)(3)(ii)(C) requires that a beneficiary must hold a U.S. baccalaureate degree or an equivalent foreign degree. The director found that the beneficiary does not have the requisite U.S. bachelor's degree or equivalent foreign degree and denied the petition.

On appeal, counsel submitted copies of various previous submissions. Counsel did not present any evidence that the beneficiary possesses a U.S. bachelor's degree or an equivalent foreign degree. Counsel provided no additional evidence that no such degree is required by the labor certification or by 8 C.F.R. § 204.5(l)(3)(ii)(C). Counsel provided no evidence that 8 C.F.R. § 204.5(l)(3)(ii)(C) is inapplicable.

The petitioner has not established that the beneficiary had a U.S. bachelor's degree in computer science, engineering, or a related field, or an equivalent foreign degree, on March 14, 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.

