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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.
BCIS, AAO, 20 Mass. 3/F
Washington, D.C. 20536

[REDACTED]

AUG 06 2003

File: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:
Beneficiary:

[REDACTED]

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:

[REDACTED]

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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a software project management and systems analysis firm. It seeks to employ the beneficiary permanently in the United States as a COOL:Plex Software Developer pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary did not possess a United States baccalaureate degree or a foreign equivalent degree in the major field of study specified on the labor certification.

On appeal, counsel asserts that the beneficiary possesses a foreign degree equivalent to a United States baccalaureate degree, and sufficient work experience to equate to a major field of study in computer science, and therefore he meets the essential requirements in the labor certification.

In pertinent part, Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

Section 204(b) of the Act, 8 U.S.C. § 1154(b), states a petition may be approved if it is found all facts in the petition are true and eligibility is established. 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. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). 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.

The record contains an approved Department of Labor Form ETA-750, Application for Alien Labor Certification (labor certification). Regarding the minimum level of education and experience required for the proffered position, Part A of the labor certification reflects the following:

Education:	Four years of college
College Degree Required:	Bachelor's, or equivalent
Major Field of Study:	Computer Science, Business Systems
Experience:	Two years in job offered or in related occupation
Related Occupation (specify):	COOL:Plex (Obsydian) programming experience, incl. 1 yr. of exp. with AS/400 hardware system.

The beneficiary received a Bachelor of Commerce degree after three years of study at Osmania University in India. The beneficiary subsequently earned a Master of Business Administration degree from the same institution.

The original petition was accompanied by a credentials evaluation from Washington Evaluation Service. In evaluating the beneficiary's Bachelor of Commerce and Master of Business Administration degrees, the evaluator stated that the beneficiary's "bachelor's degree is equivalent to a Bachelor of Science in Business Administration and a second major in Computer Science as awarded by an accredited U.S. university." The evaluator elaborates on this finding, stating that the beneficiary's "bachelor's degree, combined with the continued training and learning he acquired through his over four years relevant professional work experience in software development, system analysis, design, development and testing, is academically equivalent to a second major in Computer Science." Thus, the finding of equivalency to a second major relies on factoring in the beneficiary's post-collegiate work experience.

The beneficiary's baccalaureate transcript from Osmania University shows that the beneficiary took the following courses:

Business Economics	Science & Civilization
Accountancy I	Ind. Indl. Economy
Business Statistics	Adv. Accountancy
Ind. H. Culture	Commercial & Ind. Law
Accountancy II	Company Law & Audit.
Currency & Banking	Cost Accountancy
Business Org. Manag.	Income Tax

None of the above course titles suggest a focus on computer science. The beneficiary's master's transcript shows the following courses (some are listed more than once):

Management & Org. Theory	Financial Management
Managerial Economics	Operations Research
Marketing I	Computers I
Financial Accounting	Cost & Management Accounting
Human Resources Management	Decision Analysis
Public Enterprise Management	Business Law & Regulation
Statistics for Management	Computers II
Organizational Behavior	Computers II Practicals
Economic Environment & Policy	Inmt. Decision & Project Mgmt.
Marketing II	Financial Markets & Insts.
Financial Management	Management Control & Audit
Operations Management	Strategic Management
Operations Research	Security Ana. & Portfolio Mgmt.
Computers I	Fin. Decision & Proj. Financing
Computers Practicals I	Viva Voce
Viva Voce	Project Report

The beneficiary's master's program reflects only five computer courses, two of which have the same title ("Computers I") and appear to be the same course, repeated. The second mention of Computers I

appears on the same page as the second listings of Financial Management and Operations Management. The page is marked "Result: Improvement," which is consistent with the beneficiary having re-taken these courses (or at least the examinations) in order to improve his earlier scores. Thus, the above transcripts appear to reflect no computer courses at the baccalaureate level, and only four courses at the master's level.

The director requested further evidence, and informed the petitioner that the beneficiary's employment experience cannot count toward the education requirement on the labor certification (which plainly differentiates between education and experience). In response, the petitioner has submitted "letters from [the beneficiary's] prior employers, as evidence of his professional experience, and an equivalency evaluation report, as evidence of his professional credentials." The beneficiary's employment experience is not at issue in this proceeding. The evaluator, Professor Orandel Robotham of the City University of New York, states:

By completing approximately five years and eight months of professional experience in the computer science field after attaining the equivalent of a Master of Business Administration Degree, [the beneficiary] completed the equivalent of an additional year of bachelor's-level study, with a specialization in computer science, and also completed two additional years of professional computer science employment. Considering the additional year of study upon the foundation attained through his prior academic studies in India, it is my opinion that the foregoing combination of academic and professional credentials suggests that the candidate gained a level of academic competence equivalent to a Master of Business Administration Degree and a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States. Additionally, he has completed more than two years of further postgraduate-level employment in computer science.

Prof. Robotham's statement that three years of employment experience is equivalent to one year of undergraduate study has some relevance with regard to the formal education requirements for H-1B nonimmigrants. Here, however, the petitioner does not seek a nonimmigrant classification for the beneficiary.

The issue here is not whether the beneficiary is competent with computers. Rather, the issue is whether the beneficiary meets the plain requirements of the labor certification. If the beneficiary does not possess the required qualifications, then no amount of argument regarding alternative qualifications can overcome that finding.

The director denied the petition, stating that the beneficiary's degrees do not reflect "a computer science or business systems major field of study." The director acknowledged the above evaluations, indicating that the beneficiary's education and work experience are equivalent to a bachelor's degree in computer science, but the director found that the regulations do not permit such an equivalency to take the place of an actual bachelor's degree in the required field.

On appeal, counsel states that the beneficiary “possesses a bachelor’s degree in an acceptable field of study based on his academic credentials alone. . . . Based solely on his academic coursework, [the beneficiary] possesses a Master of Business Administration with a concentration in Computer Information Systems, which is at least equivalent to, if not the same as, a degree in ‘business systems’” (emphasis in original). Counsel bases these remarks on a “new evaluation report by Morningside Evaluations and Consulting,” which reads in part:

On the basis of the credibility of Osmania University, the number of years of coursework, the nature of the coursework, the grades earned in the coursework, and the hours of academic coursework, it is the judgment of Morningside Evaluations and Consulting that [the beneficiary] has attained the equivalent of a Master of Business Administration Degree with a Concentration in Computer Information Systems from an accredited institution of higher education in the United States.

This 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 in any way questionable, it may be discounted or given less weight. See *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). In this case, the petitioner has simply procured evaluation after evaluation until finally obtaining one that supports counsel’s argument. Furthermore, the statements contained in an educational evaluation do not inherently outweigh information plainly shown on the petitioner’s primary documents.

The beneficiary holds a bachelor’s degree in “Commerce,” whereas the labor certification requires a bachelor’s degree in “Computer Science” or “Business Systems.” Also, as noted above, the beneficiary’s baccalaureate transcript does not include a single course title that clearly involves computers or computer science.

The petitioner submits documentation from several U.S. colleges and universities that offer baccalaureate programs in Business Systems or Business Information Systems. Counsel states that these institutions offer “an academic program that combines business and computer-related studies.” The documentation shows a heavy concentration on computer-related coursework. For instance, Villa Julie College requires 26 courses (beyond the basic course requirements for all students) for a baccalaureate degree in Business Information Systems. Thirteen of these 26 courses, fully half the total, fall under the heading “IS” (Information Systems) and clearly involve computer programming, database design, and other plainly computer-related subjects. Students seeking a Bachelor of Business Administration degree in Information Systems from Pittsburg (Kansas) State University must complete ten courses offered by the Information Systems department. The petitioner has not persuasively shown that the beneficiary’s four computer-related graduate courses are comparable to the ten or more computer courses required by these institutions, and the materials submitted on appeal from these institutions does nothing to undermine the director’s stated grounds for denial.

Counsel argues that the beneficiary “meets the bachelor’s degree requirement based on his academics alone, and he meets the field of study requirement through a combination of academic coursework and work experience. Nothing in the regulations, statute, or case law precludes [the beneficiary] from

relying on work experience to meet the field of study requirement where he already possesses a bachelor's degree." Counsel offers no support whatsoever for this statement. Following counsel's reasoning, an alien's actual college major is irrelevant, provided the alien has subsequently worked in the field relating to the job offer. We reject this reasoning.

The Form ETA-750 labor certification clearly separates and differentiates between education (including major field of study) and work experience. The plain wording of the form further instructs the petitioner to list "the MINIMUM education, training, and experience," not "education, training *or* experience."

Because the labor certification form requires the petitioner to specify the major field of study, we must presume that this information is material and relevant. If the petitioner will accept a bachelor's degree from any major field of study, then the burden is on the petitioner to explain why it specified, under penalty of perjury, only certain majors in this instance. The major field of study is tied to the alien's college education, and not to the alien's work experience. Therefore, an alien cannot obtain a bachelor's degree in an unrelated field, and then complete the "major field of study" requirement in a non-academic, non-degree-granting environment. Employment is not study, and such activities fall under the heading of "experience" rather than "education."

Counsel states that, because the beneficiary holds a bachelor's degree, he qualifies for classification as a "professional" pursuant to 8 C.F.R. § 204.5(l)(3)(ii)(C). 8 C.F.R. § 204.5(l)(2) defines a "professional" as "a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions." At issue here is not whether the beneficiary holds a degree, but whether he is "a qualified alien." The terms of the labor certification define what is necessary to qualify for the job offered.

Counsel asserts that, even if the beneficiary cannot qualify as a professional, he "may be approved as a skilled worker because the employer would have accepted applicants who possessed a bachelor's degree OR equivalent." While classification as a skilled worker does not require a bachelor's degree, the alien must still meet the minimum requirements set forth on the labor certification. Whatever classification the petitioner seeks on the beneficiary's behalf, the labor certification still requires a "Bachelor's, or equivalent" with a major in "Computer Science [or] Business Systems." The term "equivalent" is listed under "College Degree Required," indicating that the "equivalent" is presumptively a foreign degree equivalent to a U.S. baccalaureate. If the employer will consider a greater amount of experience in lieu of a bachelor's degree in a relevant major, then the employer must specify how much experience is entailed. If the petitioner does not plainly define what it considers to be the equivalent of a bachelor's degree, then there is no reliable way to compare a job applicant's qualifications to that undefined "equivalent." In this instance, there is nothing on the labor certification to show that the petitioner will consider five years of experience in place of two years of experience plus a bachelor's degree in a specified major field.

Counsel states "[t]o interpret the minimum requirements in a manner inconsistent with the employer's and the Department of Labor's understanding would be to change the rules in the middle of the game." In this instance, the labor certification contains nothing to show that the "employer's . . .

understanding" matches that of the Department of Labor. If the minimum requirements do not, in fact, include four years of college and a degree of some kind (either a U.S. baccalaureate or a foreign equivalent degree), then the labor certification does not accurately reflect the minimum educational requirements for the position. The petitioner's attempts to define "equivalent," after the fact, in a manner that conforms to the beneficiary's qualifications amounts to an impermissible attempt to modify the labor certification after it has already been approved by the Department of Labor. Any amendment to an already-approved labor certification must be made before the filing of any ensuing petition. Otherwise, the petitioner effectively presents one job offer to the Department of Labor, and a different job offer to the Bureau.

For the above reasons, the petitioner has not established that the beneficiary meets the minimum job requirements as set forth on the labor certification. Therefore, the petition cannot be approved, regardless of the specific classification sought.

In visa petition proceedings, 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.