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U.S. Department of Homeland Security

Bureau of Citizenship Services 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



File: WAC 01 246 54160 Office: California Service Center

Date:

AUG 07 2003

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:



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, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner manufactures petrochemical equipment and builds petrochemical facilities. It seeks to employ the beneficiary permanently in the United States as a mechanical equipment engineer. 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 determined that the petitioner had not established that the petition has the qualifications for the proffered position as stated on the labor certification.

On appeal, counsel submits a brief.

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

The labor certification states that the proffered position requires four years of college resulting in a bachelor of science degree in mechanical engineering or equivalent and three years of experience as a mechanical engineering technician or drafter.

With the petition, counsel submitted sessional reports from the St. Helen's College Department of Mining and Engineering, an employer report and an academic transcript from Granville College, and various other certificates indicating attendance at classes and seminars. Although all of those reports manifest classes the beneficiary has taken or class credit received, they do not specify that the beneficiary was awarded a bachelor's degree in any subject.

With those reports, the petitioner submitted the report of an educational evaluator, who stated that the beneficiary's education is the equivalent of two years of undergraduate study in mechanical engineering in a United States institution. In addition, the evaluator stated that the beneficiary's work experience, coupled with his education, is the equivalent of a bachelor of science degree in mechanical engineering from a United States institution.

Because the evidence submitted did not demonstrate that the beneficiary has the requisite education and experience, the California Service Center, on November 7, 2001, requested additional evidence pertinent to that issue.

In response, counsel submitted a copy of the report of the educational evaluator, described above. On this copy, the portion of the report which states that the beneficiary's work experience, coupled with his education, is the equivalent of a bachelor of science degree in mechanical engineering from a United States institution is highlighted for emphasis.

On February 5, 2002, the Director, California Service Center, denied the petition, finding that the evidence submitted did not demonstrate that the petitioner has the degree required by the labor certification.

In a motion to reconsider, counsel argued that the beneficiary's education and experience, considered together, are the equivalent of a bachelor's degree.

On April 9, 2002, the Acting Director, California Service Center, reopened the petition and denied it again. The Acting Director noted that experience may be substituted for education in non-immigrant petitions but, pursuant to 8 C.F.R. 204.5(l)(3)(ii)(C), not in immigrant petitions. The Acting Director observed that the petitioner had submitted no evidence that the beneficiary has a bachelor's degree in mechanical engineering or an equivalent foreign degree as the labor certification requires, and that, in the absence of the requisite degree, the beneficiary is ineligible.

That decision also stated that the current petition could not be reformed into a petition for a skilled worker under section 203(b)(3)(A)(i) of the Act.

On appeal, counsel argues that the petition did not require a degree, but rather a degree or the equivalent of a degree. As such, counsel argues, the petition was not for a professional under section 203(a)(3)(ii) of the Act, but rather a petition for a skilled worker under section 203(a)(3)(i) of the Act.

Counsel submitted two non-precedent decisions, the facts of which he asserts are similar to the facts of the instant case. Although 8 C.F.R. 103.3(c) provides that Service precedent decisions are binding on all Service employees in the administration of the Act, unpublished decisions are not similarly binding.

The section of the labor certification labelled "Education" states that the proffered position requires four years of college culminating in a "B.S. or equivalent" in "Mechanical Engineering." The petition is clearly for a professional pursuant to section 203(b)(3)(A)(ii) of the Act. As 8 C.F.R. 204.5(l)(3)(ii)(C) does not permit the recognition of experience equivalent to education,

the phrase "B.S. or equivalent" must necessarily be construed to require a bachelor's degree or an equivalent foreign degree. Further, the beneficiary does not have the four years of college, which is another specific requirement of the labor certification.

The petitioner has not established that the beneficiary has four years of college and a U.S. bachelor's degree in mechanical engineering or an equivalent foreign degree. Therefore, the petitioner has not established that the beneficiary qualifies for the proffered position and 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.