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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



File: LIN 02 224 51756

Office: NEBRASKA SERVICE CENTER

Date: **AUG 25 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:



**PUBLIC COPY**

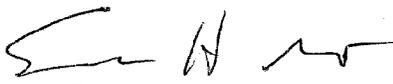
INSTRUCTIONS:

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 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 car rental and leasing company. It seeks to employ the beneficiary permanently as a software 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.

8 C.F.R. § 204.5(1)(3)(ii)(C) states:

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

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 priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is June 25, 2001.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of software engineer required a Bachelor's degree in Computer and Information Science, or

Engineering, and one year of experience in the job offered, or one year of experience in the related occupation of programmer analyst.

The director determined that the petitioner had not established that the beneficiary had the required Bachelor's degree or equivalent foreign degree and denied the petition. The director noted that the record contained a copy of the beneficiary's Post Graduate Diploma in Computer Science issued in April 1994, a copy of the beneficiary's Diploma of Electronics and Communication Engineering with Television Engineering and Instrumentation and Control Systems as Elective Subject issued in April 1990, and certificates for other independent courses taken by the beneficiary. The director further noted that the beneficiary was awarded a Bachelor of Science degree in Business Administration on March 8, 2002, after the priority date of the petition.

On appeal, counsel re-submits the credential evaluation from HR Analytical Services and argues that "the Beneficiary has an equivalency of Bachelor's Degree just using the education qualification, and not using the experience gained by the beneficiary."

The evaluation from HR Analytical Services states that the beneficiary has "the equivalent of a Bachelor of Science degree in Computer Science from an accredited post-secondary institution in the United States." The evaluation does not say that the beneficiary has a foreign equivalent degree but that the various courses he has taken and the certificates he has received equate to a degree.

On appeal, counsel for the petitioner asserts that the beneficiary has a foreign degree equivalent to a bachelor's degree in computer science. Counsel states that the petitioner is not attempting to rely on a combination of work experience and education as the equivalent of a bachelor's degree in computer science, but rather that the beneficiary possesses a foreign degree that is the equivalent of the required degree. We do not find this argument convincing.

The beneficiary has not received a single foreign degree which can be deemed to be the equivalent of a United States baccalaureate degree. Accordingly, the beneficiary does not qualify for the proffered position as he does not possess the specific degree required by the labor certification, a bachelor's degree in Computer Information Science or Engineering.

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.