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U.S. Department of Homeland Security

Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street N.W.
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: DEC 10 2003

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]

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 Citizenship and Immigration Services (CIS) 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 employment based immigrant visa petition was initially approved by the Director, Nebraska Service Center. On further review of the record, the director determined that the beneficiary was not eligible for the benefit sought. Accordingly, the director properly issued a notice of intent to revoke the approval of the preference visa petition, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The decision of the director will be withdrawn and the petition will be approved.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is a computer-consulting firm. It seeks to employ the beneficiary as a consultant in Oracle database administration. As required by statute, the petition was accompanied by certification from the Department of Labor.

The petition was approved on August 12, 2001. Upon further review, the director determined that the beneficiary did not qualify for the visa classification sought, and revoked the petition.

On appeal, the petitioner's counsel contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification.

In pertinent part, Section 203(b)(3)(A)(i) of 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. The regulation at 8 C.F.R. § 204.5(l)(2) provides that relevant post-secondary education may be considered as training.

Section 203(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions. A professional must have a U.S. baccalaureate degree or a foreign equivalent degree. 8 C.F.R. § 204.5(l)(2).

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is November 3, 2000.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of computer support specialist. In the instant case, item 14 describes the "college degree required" as a "Bachelor's *." The major field of study must be computer science, math or electrical engineering. The asterisk following the bachelor's degree requirement refers to a notation in Item 15 under "other special requirements." Item 15 provides that "three years undergraduate education plus one year experience in business analyst acceptable in lieu of a Bachelor's degree." The applicant must also have one-year

employment experience in the job offered or one year in a related occupation of technical consultant or systems analyst.

The record contains evidence reflecting that the beneficiary received a three-year bachelor's degree in commerce from the University of Bombay in March 1986. His diploma indicates that his area of special study was financial accounting and auditing. The record contains an academic evaluation from Evaluation Service, Inc. dated April 9, 2003. It confirms that the beneficiary's formal education at the University of Bombay is the U.S. equivalent of three years of undergraduate study in business administration. The record also indicates that the beneficiary received a master's degree in business administration from Harrington University in April 2000.

In his revocation, the director concluded that a combination of education and experience might not be substituted for a required bachelor's degree. Ordinarily, we would concur with this observation, but in the instant case, as noted by counsel in her response to the notice of intent to deny, the asterisk and corresponding notation in item 15 indicates that the employer will accept an applicant with three years of undergraduate education plus one year of experience in lieu of an applicant with a bachelor's degree.

We interpret this as not to mean these qualifications are intended to describe the equivalence of a bachelor's degree, but rather that the employer would accept an alternative applicant with less than a U.S. bachelor's or foreign equivalent degree within these specific parameters. Here, the record reflects that the beneficiary has three years of undergraduate education and at least one year of experience working in business analysis.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a skilled worker, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750. The required qualifications for a position are described in the job offer portion of the approved labor certification. CIS may not impose or add additional requirements. *See Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The bachelor's degree requirement appears to be specifically amended by the terms set forth in item 15 of the approved labor certification. Accordingly, we cannot find that the director had sufficient grounds to revoke the approval of the petition.

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 met that burden.

ORDER: The appeal is sustained. The director's decision revoking the approval of the petition is withdrawn. The petition is approved.