

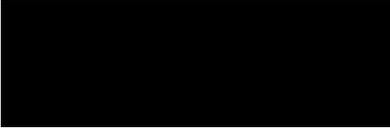
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U.S. Department of Homeland Security
Citizenship and Immigration Services

B6

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



File: WAC 02 133 52146 Office: CALIFORNIA SERVICE CENTER

Date: **DEC 13 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 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 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 sustained.

The petitioner is a semiconductor manufacturer. It seeks to employ the beneficiary permanently in the United States as a mechanical 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 ruled that the petitioner had not established that the beneficiary met the requirements for the proffered position as stated on that approved Form ETA 750 labor certification.

On appeal, submits a brief and additional evidence.

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 nature, for which qualified workers are not available in the United States.

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 are members of the professions.

8 CFR § 204.5(l)(3)(ii) states:

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

(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 that the minimum of a baccalaureate degree is required for entry into the occupation.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary has the qualifications stated on the ETA 750 labor certification. The ETA 750 labor certification states that the beneficiary must have four years of college culminating in a "BS or equivalent." A footnote states,

Our reference to "BS or equivalent" means a U.S. Bachelor of Science degree or equivalent as determined by properly evaluated credentials. We are not seeking to substitute a combination of education and experience for the degree requirement.

With the petition, counsel provided a copy of a diploma showing that, on January 28, 1992, the beneficiary was awarded a bachelor of industrial and production engineering by the Mangalore University in Karnataka state, India. With that diploma, counsel submitted copies of the beneficiary's report cards from Mangalore University from July 1988, July 1989, December 1990, July 1990, January 1991, December 1991, August 1991.

Counsel submitted a certificate from the Manipal Institute of Technology of Mangalore University stating that the beneficiary had been a student there from 1987 to 1991, and that he passed the bachelor of engineering examination given during May and June of 1991. Further, counsel submitted a certificate stating that the petitioner was fifth in his class of 52.

Counsel also provided a report from Morningside Evaluations and Consulting, an educational evaluator. The evaluation, dated February 28, 2002, stated that, in the opinion of the evaluator, the beneficiary's degree in industrial and production engineering is the equivalent of a Bachelor of Science degree in mechanical engineering from an accredited United States institution.

The California Service Center, on May 1, 2002, requested additional evidence to demonstrate that the beneficiary has the requisite U.S. Bachelor of Science in mechanical engineering or an equivalent foreign degree.

In response, counsel submitted a letter, dated June 21, 2002. In that letter, counsel noted that the Form ETA 750, as amended, states, in part, that the position requires a "BS or equivalent" in mechanical engineering as determined by properly evaluated credentials. Counsel further noted that the beneficiary had completed substantial coursework in mechanical engineering and that a professional educational evaluator had reviewed the beneficiary's coursework and found it to be the equivalent of a

U.S bachelor of science degree in mechanical engineering from an accredited United States institution.

On August 22, 2002, the Director, California Service Center, denied the petition. The director specifically noted that the beneficiary's degree is in industrial and production engineering, which he found had not been shown to be the equivalent of a degree in mechanical engineering. As such, the director found that the beneficiary is not a member of the professional field of the intended employment.

On appeal, counsel argues that the evidence demonstrates that the petitioner's foreign degree is the equivalent of a U.S. Bachelor of Science degree in mechanical engineering. Counsel submitted two additional educational evaluations in support of that contention.

The first additional educational evaluation is from an associate professor at the New Jersey Institute of Technology. That evaluation describes the prerequisites of any engineering degree at a United States institution and the specific additional courses necessary to attain a degree in mechanical engineering in particular. The evaluator states that, having reviewed the description of the beneficiary's coursework, he believes that the beneficiary's training encompassed all of the courses required to earn a bachelor's degree in mechanical engineering from an accredited institution in the United States.

The other additional educational evaluation is from an evaluator for the Trustforte Corporation of New York. The evaluator noted that the beneficiary has completed specialized coursework appropriate to a bachelor's degree in mechanical engineering. Based on the beneficiary's coursework, the evaluator found the beneficiary's education to be the equivalent of a bachelor of science degree with a dual major in mechanical engineering and production engineering from an accredited United States institution.

The petitioner has demonstrated that the petitioner's bachelor's degree in industrial and production engineering from Mangalore University in India is the equivalent of a bachelor's degree in mechanical engineering from an accredited U.S. institution. Therefore, the petitioner has overcome the sole basis for the decision of denial.

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.