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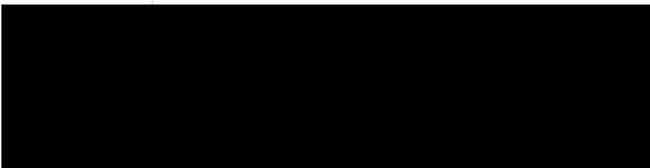
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U.S. Department of Homeland Security

Citizenship and Immigration Services

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invasion of personal privacy**

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



File: [redacted] Office: Nebraska Service Center

Date:

DEC 18 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:



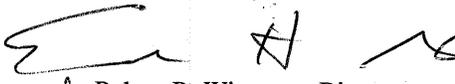
INSTRUCTIONS:

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 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a telecommunications company. It seeks to employ the beneficiary permanently as an analyst. 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 July 17, 2001.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of analyst required the completion of

six years of college and a Bachelor's degree in Computer Science or Engineering.

The director determined that the petitioner had not demonstrated that the beneficiary possessed the minimum requirements of the labor certification as of the priority of the petition, that is, the date the application for labor certification was filed. The director noted that the beneficiary had not completed six years of education leading to a bachelor's degree in engineering or computer science. The director did note, however, that the petitioner had submitted evidence that the beneficiary had earned a Bachelor of Technology degree in Engineering (Mechanical Engineering) following a four-year course of study.

The record shows that the beneficiary's four-year Bachelor of Technology from the University of Calicut (India) was evaluated to be the equivalent of a United States Bachelor's degree in Mechanical Engineering. All indications are that the director was satisfied with this evaluation. The issue then remains: what about the requirement on the approved labor certification of six years of college education. As noted above, the director felt that the labor certification indicates that the beneficiary's degree should have been granted after six years of education. On appeal, counsel states that this was an inadvertent discrepancy which was missed during the labor certification process. Alternatively, counsel argues that the beneficiary, in fact, possesses more than six years of college education.

Counsel's assessment is overly generous since some of the education he points to can best be described as secondary or high school education. Nevertheless, the documentation submitted indicates that, during the years 1996 and 1997 and after receiving his bachelor's degree, the beneficiary took two courses of study in Computer Applications at Loyola College, Madras, India, completing 35 and 24 credits. Generally speaking a full course of study for a term or semester will consist of at least 12 hours or credits, and a full academic year will consist of two semesters or terms. Based on the evidence presented, the beneficiary has two years of college-level education beyond the bachelor's degree. There is nothing in CIS or Department of Labor regulations which indicates that these two years cannot be added to the four years required for the bachelor's degree to satisfy the labor certification requirement of six years of college education.

Accordingly, the beneficiary does qualify for the proffered position as he meets the six-year college education requirement of the labor certification.



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.