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U.S. Department of Homeland Security

Citizenship and Immigration Services

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



File: WAC 01 277 53846 Office: CALIFORNIA SERVICE CENTER

Date:

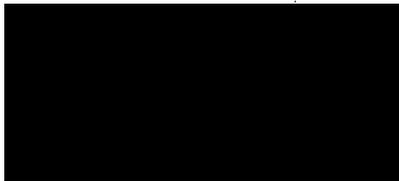
DEC 18 2003

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:



identifying data selected to
prevent identity unwarranted
invasion of personal privacy

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.

Helen E. Crawford for
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 is an after-school care and education institute. It seeks to employ the beneficiary permanently in the United States as a teacher of Chinese language and calligraphy. 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 beneficiary met the requirements for the proffered position as stated on that approved Form ETA 750 labor certification.

On appeal, counsel argued that experience might be substituted for the education required by 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 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(1)(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 submitted in this case states that the proffered position requires that the beneficiary have a bachelor's degree or equivalent in Chinese linguistics and culture.

With the petition counsel submitted evidence that the beneficiary attended and graduated from the Shanghai Xuhui Spare-Time University in China. Counsel provided evidence that the beneficiary taught school in China. Counsel also provided an educational evaluator's report, dated October 14, 1999. That report states that the petitioner's education is the equivalent of an associate's degree offered by an accredited community college in the United States.

The evidence submitted did not demonstrate that the beneficiary has the requisite bachelor's degree or foreign equivalent. On December 13, 2001, the California Service Center requested additional evidence, but failed to request evidence that the beneficiary possesses the requisite degree.

On February 28, 2002, the Acting Director, California Service Center, issued a Notice of Intent to Deny in this matter. The Acting Director noted that the labor certification states that the proffered position requires a bachelor's degree or an equivalent foreign degree, whereas the beneficiary's degree is not the equivalent of a bachelor's degree, but only of an associate's degree.

Counsel responded with a letter, dated April 20, 2002. In that letter, counsel cited 8 C.F.R. § 214(h)(4)(iii)(D)(5) for the proposition that the beneficiary's teaching experience may be substituted for education at a ratio of three years of experience to one year of education. Counsel urged that the beneficiary therefore qualifies for the proffered position.

The director determined that the evidence submitted did not establish that the beneficiary has the minimum qualifications for the proffered position and, on June 6, 2002, denied the petition.

On appeal, counsel stated,

Both non-immigrant and immigrant regulations acknowledge the Three-for-one Rule (3 years of

experience = 1 year of university credit). Attorney will find evidence in support of this claim in the appeal soon.

Counsel submitted no other argument or evidence and cited no authority in support of this assignment of error. No further information, argument, or documentation has been received from the petitioner or anyone acting on the petitioner's behalf.

The result in this matter is the same whether the petition is analyzed as a petition for a professional under Section 203(b)(3)(A)(ii) of the Act or as a petition for a skilled worker under Section 203(b)(3)(A)(i) of the Act. If the petition is for a professional then, pursuant to CFR § 204.5(1)(3)(ii)(C) the petitioner must show that the beneficiary has a bachelor's degree in the field of the proffered position which, in this case, is Chinese Linguistics and Culture, and that such a degree is a prerequisite for entry into the occupation.

If the petition is for a skilled worker then, pursuant to 8 CFR § 204.5(1)(3)(ii)(B), the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA 750 which, in this case, includes a bachelor's degree in Chinese Linguistics and Culture or an equivalent foreign degree.

Counsel submitted the report of an educational evaluator and urges that the beneficiary is qualified because her education and experience, taken together, are equivalent to a bachelor's degree in Chinese Language and Culture.

The regulation cited by counsel in support of applying the "Three-for-one rule" in this case, 8 C.F.R. § 214(h)(4)(iii)(D)(5), applies only to non-immigrant status. Neither section 203(b)(3)(A)(i) of the Act, nor section 203(b)(3)(A)(ii) of the act, nor the associated regulations, allows the substitution of experience, in whole or in part, for the requisite education as stated on an approved labor certification. Further, this office is unable to alter the terms of an approved labor certification. In the absence of evidence that the beneficiary has a bachelor's degree in Chinese Linguistics and Culture or an equivalent foreign degree, the instant 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.