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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: EAC 01 267 51103 Office: Vermont Service Center

Date: **JUL 03 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 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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an information systems company. It seeks to employ the beneficiary permanently in the United States as a software verification 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 determined that the petitioner had not established that the beneficiary has the bachelor's degree which the labor petition states is a prerequisite for the proffered position.

On appeal, counsel submits a brief.

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.

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 on the priority date of the petition the beneficiary had the education and experience which the Form ETA 750 states are required by the proffered position. The priority date is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on November 15, 2000.

The Form ETA 750 states that the proffered position requires four years of college leading to a "bachelor's degree or equiv." in computer science or engineering. The Form ETA 750 further states that the position requires two years experience as a software engineer or systems integrator.

With the petition, counsel submitted the reports of two educational evaluators who found that the beneficiary's work experience, her two associates degrees and her additional course work, taken together, are the equivalent of a bachelor's degree in computer science.

Because the petition calls for a bachelor's degree it is construed as a petition for a professional pursuant to 8 C.F.R. § 204.5(l). 8 CFR § 204.5(l)(3)(ii)(C), however, requires that a petition for a professional be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree. That section of the regulations does not allow the substitution of lesser degrees, work experience, or other course work for the requisite degree.

Because the evidence submitted did not demonstrate that the beneficiary has the required bachelor's degree, the Vermont Service Center, on November 5, 2001, requested additional evidence pertinent to that issue. Specifically, the Service Center requested evidence that the beneficiary has the formal education which the Form ETA 750 states that the proffered position requires.

In response, counsel submitted (1) copies of diplomas showing that the beneficiary has associates degrees from Guilford Technical Community College in business computer programming and in microcomputer systems technology, (2) certificates of completion showing that the beneficiary has studied Local Area Networks, Microcomputer Systems Technology, and IBM AS/400 minicomputers, (3) certificates of attendance showing that the beneficiary attended classes in Beginning Excel and CorelDRAW, and (4) an undated letter from St. Augustine's College stating that the beneficiary is pursuing a bachelor's degree in Organization Management there.

On March 5, 2002, the Director, Vermont Service Center, denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite bachelor's degree.

On appeal, counsel argues that although the petition may not be approved as a professional under 8 CFR § 204.5(1)(3)(ii)(C), it still may be approved as a petition for a skilled worker pursuant to 8 CFR § 204.5(1)(3)(ii)(B).

In support of that position, counsel submits a transcript of a meeting of immigration lawyers and the liaison of the Vermont Service Center. In that transcript, the liaison is quoted as saying that if a petition for a professional under 8 CFR § 204.5(1)(3)(ii)(C) may not be approved as such, then it should be approved as a petition for a skilled worker pursuant to 8 CFR § 204.5(1)(3)(ii)(B) if no other issues exist.

To determine whether a beneficiary is eligible for a third preference visa, the Service must ascertain whether the alien is, in fact, qualified for the certified job. The Service will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications the Service must look to the job offer portion of the labor certification to determine the required qualifications for the position. The Service may not ignore a term of the labor certification, nor may it impose 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 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The evidence submitted does not demonstrate that the beneficiary has the requisite bachelor's degree in computer science or engineering or a foreign degree equivalent to such a bachelor's degree. Therefore, the petitioner has not established that the beneficiary had the education stated as mandatory on the Form ETA 750.

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.