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

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

OCT 02 2003

File: [REDACTED] SRC 01 268 51528 Office: TEXAS SERVICE CENTER

Date:

IN RE: Petitioner: [REDACTED]
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:

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 denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

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 skilled worker or as a member of the professions who holds a baccalaureate degree. The petitioner is a software development and consulting firm. It seeks to employ the beneficiary permanently in the United States as a systems 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 educational requirements set forth on the labor certification.

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

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.

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.

The alien must have all the education, training and experience specified in the job offer as of the time of first filing of the labor certification application. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971); *Matter of Wing's Tea House*, 16 I&N 158 (Reg. Comm. 1977). The date of the first filing of the labor certification in this case is April 17, 2000. Citizenship and Immigration Services must determine if the alien is qualified under the labor certification requirements.¹

The alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Blocks 14 and 15, which should be read as a whole, set forth the educational, training, and experience requirements. In this case, that information appears as follows:

Block 14

Education	College- 4 years College Degree Required – Bachelor's Major Field of Study – Computers or MIS
Training	(none listed)
Experience	Job Offered – 2 years

¹ On August 30, 2001, the petitioner requested substitution of this alien for the original labor certification beneficiary.



Block 15
Related Occupation (specify) – (none listed)
Other Special Requirements – (none listed)

No other information appears in Block 14 or 15. The beneficiary holds a “bachelor of engineering” degree from Osmania University, India. She received her degree in June 1988 following a four-year course of study. The record also contains the beneficiary’s grade transcripts and an academic evaluation dated August 19, 1999 produced by the Trustforte Corporation. This evaluation confirms that the beneficiary holds a four-year baccalaureate degree and notes that the beneficiary additionally “completed specialized courses in her areas of concentration, Electronics and Communication Engineering.” The evaluation adds that the beneficiary’s coursework included advanced-level courses in “Electronic Engineering, Communication Engineering, Computer Programming, Network Theory, Electronics, Control Systems, Computer Architecture, Digital Signal Processing, Microprocessors, Computing Techniques, IC Applications, Electronic Instrumentation, and related areas.” It concludes that she received the U.S. equivalent of a “Bachelor of Science Degree in Electronic Engineering.”

The director concluded that the beneficiary lacked the requisite major field of study of computers or MIS (management information systems) as required by the terms of the approved labor certification and denied the petition.

On appeal, counsel asserts that the beneficiary’s degree in engineering and related knowledge establishes that they are overlapping disciplines. He argues that the beneficiary’s degree in engineering and completion of specialized coursework is commensurate with a bachelor’s degree in computers or management information systems since it builds upon the same skills.

In this case, it must be shown that the beneficiary meets the educational, training, experience and other special requirements listed in blocks 14 and 15 of the approved labor certification as of April 17, 2000, the filing date of the labor certification. CIS will not alter the substantive job requirements that are inherent to the labor certification process as set forth on the approved Form ETA 750 in order to accommodate the qualifications of a particular beneficiary. As the beneficiary’s major field of study is engineering, rather than computers or management information systems as required by the labor certification, the director’s decision in denying this petition was correct.

Based on the evidence contained in the record, the petitioner has not demonstrated that the beneficiary’s educational credentials satisfy the specific requirements 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 not met that burden.

ORDER: The appeal is dismissed.