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Washington, DC 20536



U.S. Citizenship  
and Immigration  
Services



FILE: LIN 01 228 55986 Office: NEBRASKA SERVICE CENTER Date: APR 26 2004

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to  
Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

ON BEHALF OF PETITIONER:  
[Redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment based immigrant 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 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 professional or skilled worker. The petitioner is a hotel. It seeks to employ the beneficiary as a hotel manager. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary did not meet the education required by the labor certification.

On appeal, counsel contends that the director failed to account for all the evidence presented, namely the degree evaluation presented regarding the beneficiary.

In pertinent part, 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) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is January 14, 1998.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of hotel manager. In the instant case, item 14 describes the college degree required as a B.S. or equivalent. The major field of study must be business administration or business management. The applicant must also have two years employment experience in the job offered or two years experience in a related position as a manager in a business enterprise.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submitted several affidavits relating to the beneficiary's work experience and an evaluation, dated July 14, 1997, from [REDACTED] & Associates, Inc.

The evaluation states:

In summary, Mr. [REDACTED] has clearly proven himself to be a competent professional whose work experience is the equivalent of the U.S. degree Bachelor of Business Administration with a major in management.

It is noted that in *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides:

[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The director denied the petition, concluding that the beneficiary's educational credentials are not an acceptable equivalency for a United States baccalaureate degree. The AAO concurs. The approved labor certification states that the proffered position requires a bachelor's degree or equivalent.

On appeal, counsel asserts:

It is the position of the petitioner, that the experience level of the beneficiary, as attested to by the degree evaluation prepared by Josef Silny & Associates, Inc., and made a part of the response to the request for evidence letter, sets forth the requisite educational requirements for the labor certification of January 14, 1998. The petitioner does not deny that no evidence of "a classroom degree" has been provided to the Service, however, the experience and background of the beneficiary more that [sic] satisfies the requirement.

The AAO cannot conclude that the requirements of this labor certification allow employment experience to equate to a U.S. bachelor's degree. Rather, in this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Here, the record reflects that the beneficiary's formal education consists of far less than a four-year curriculum, although the evaluation suggests that the beneficiary's employment experience should be considered as the equivalent of a baccalaureate degree.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a skilled worker, 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 business administration or business management, or an equivalent foreign degree.

Based on the evidence submitted, the AAO concurs with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as required by the terms 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 sustained that burden.

**ORDER:** The appeal is dismissed.