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U.S. Department of Homeland Security

Citizenship and Immigration Services

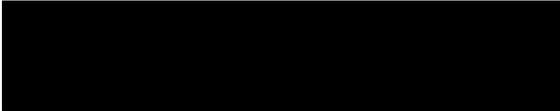
ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 I Street, N.W.
Washington, DC 20536



File: LIN 02 298 51215 Office: NEBRASKA SERVICE CENTER

Date: JAN 14 2004

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:



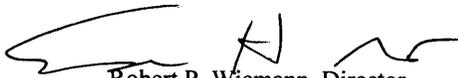
INSTRUCTIONS:

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 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 on appeal. The appeal will be dismissed.

The petitioner is a computer software consultant and contractor. It seeks to employ the beneficiary permanently in the United States as a senior program analyst. 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 submits a brief and copies of evidence previously submitted.

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 its Form ETA 750 Application for Alien Employment Certification (Labor Certification) as certified by the U.S. Department of Labor and submitted with the instant petition. In the space labeled "College Degree Required (specify)" on the Form ETA 750, Part A, Question 4 of the Labor Certification submitted in this case the petitioner entered "B.S. or equivalent." In the space labeled "Major Field of Study," the petitioner entered "Computer Science."

The Form ETA 750, Part B, Statement of Qualifications of Alien states that the beneficiary attended Gateshead College in England from September 1977 to July 1981 and earned a Higher Business Education Technical Certificate there.

With the petition counsel submitted no evidence that the petitioner has earned the requisite bachelor's degree in computer science or an equivalent foreign degree. Therefore, the Nebraska Service Center, on December 11, 2002, requested additional evidence to demonstrate that the beneficiary has a bachelor's degree in computer science or an equivalent foreign degree.

In response, counsel submitted an educational evaluation stating that the beneficiary has worked in the computer field for 18 years and has, therefore, the equivalent of a bachelor's degree in computer science earned at an accredited United States institution.

The director determined that the evidence submitted did not establish that the beneficiary has the minimum qualifications for the proffered position and, on February 26, 2003, denied the petition.

On appeal, counsel argues that the Form ETA 750 does not require a bachelor's degree, but a degree or degree equivalent. Counsel also argues that the petition should be analyzed as a petition for a skilled worker, rather than a petition for a professional.

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 computer science, 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 computer science or an equivalent foreign degree.

Counsel submitted the report of an educational evaluator. That report states that:

On the basis of the [beneficiary's] eighteen years of work experience and professional training in Computer Information Systems, and related areas, it is the judgment of [the educational evaluation service] that [the beneficiary] has attained the equivalent of a Bachelor of Science in Computer Information Systems degree, from an accredited institution of higher education in the United States.

On the strength of that report, counsel asserts that the beneficiary is qualified because his experience is equivalent to a bachelor's degree in computer science.

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 computer science 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.