



U.S. Citizenship
and Immigration
Services

B 6



FILE:



Office: TEXAS SERVICE CENTER

Date:

MAY 17 2008

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:

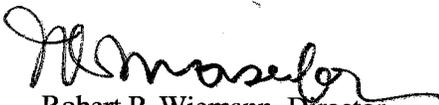
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invasion of personal privacy

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 preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The visa petition will be approved.

The petitioner is a manufacturer and assembler of metal stamp components. It seeks to employ the beneficiary permanently in the United States as a financial 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 additional evidence.

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.

The regulation at 8 CFR § 204.5(l)(3)(ii) states:

(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 clearly states that the proffered position requires that the beneficiary have a minimum of a bachelor's degree with a major field of study in accounting or finance.

With the petition counsel submitted a copy of the beneficiary's diploma and transcript from Middle Tennessee State University (MTSU). Those documents indicate that the petitioner has a Master of Business Administration (MBA) degree from that institution. Counsel also provided a copy of the beneficiary's résumé, on which she stated that she has an MBA with emphasis in finance. In a brief filed with the petition, counsel argued that the beneficiary's MBA exceeds the requirement, as stated on the Form ETA 750, of a bachelor's degree in accounting or finance.

Because the evidence submitted did not demonstrate that the beneficiary's education meets or exceeds the minimum of a bachelor's degree in accounting or finance, the Texas Service Center issued a request for evidence in this matter. Although the record does not contain a copy of that request, the petitioner's response makes clear that the Service Center requested additional evidence that the beneficiary has the requisite degree.

In response, counsel submitted a letter in which she stated that the beneficiary's MBA exceeds the minimum requirement of a bachelor's in accounting or finance. Counsel also provided a copy of a section of the course catalog of MTSU with portions highlighted. The highlighted sections indicate that obtaining an MBA at MTSU requires classes in accounting and finance.

Further, counsel provided a copy of a letter, dated December 13, 2001, from a graduate analyst at MTSU. That letter states that the beneficiary has taken fifteen graduate semester hours in finance.

The director determined that the evidence submitted did not establish that the beneficiary has the minimum qualifications for the proffered position and, on June 26, 2002, denied the petition.

On appeal, counsel asserts that the beneficiary's MBA meets and exceeds the minimum requirement of a bachelor's with a major field of study in finance or economics. Counsel notes that half of the classes leading to the beneficiary's MBA were finance classes and another 10% were in accounting classes and "the clearly finance-related field of economics." Thus, counsel asserts, the petitioner has a superior degree, a master's degree rather than a bachelor's degree, with a major field of study in economics. Counsel also advances various arguments to the effect that the phrase "major field of study" on the Form ETA 750 is not equivalent to an academic major. Thus, counsel asserts that the beneficiary's lack of a degree in economics or accounting is not controlling.

With the brief, counsel submits a letter, dated July 19, 2002, from the petitioner's CFO. In that letter, the CFO concurs with counsel's assertion that an MBA meets and exceeds the requirement of a minimum of a bachelor's degree in accounting or finance.

Counsel also provides a letter, dated July 16, 2002, from the MTSU Vice Provost for Research and Dean of the College of Graduate Studies. That letter states that MTSU does not offer an MBA with a concentration in finance, but that the beneficiary "completed the equivalency [sic] of a concentration in finance." The dean stated that the beneficiary's claim that she completed a concentration in finance was a good faith error.

Counsel submitted a copy of the *Occupational Outlook Handbook* (OOH) of the U.S. Department of Labor, Bureau of Labor Statistics section pertinent to accountants and auditors and the section pertinent to Financial Analysts and Personal Financial Advisors. The section pertinent to accountants and auditors states that some employers prefer applicants with a master's degree in accounting or an MBA with a concentration in accounting for those positions. The section pertinent to Financial Analysts and Personal Financial Advisors states that an MBA is desirable.

Those sections of the OOH clearly state that some employers prefer to hire an applicant with an MBA for some positions. That, however, is not the nature of this office's inquiry on appeal. The Form ETA 750 requires a minimum of a bachelor's degree with a major field of study in accounting or finance. Neither the petitioner, nor counsel, nor this office may vary the terms of an approved Form ETA 750. The inquiry of this office is whether the petitioner has demonstrated that the beneficiary is qualified for the position pursuant to the terms of the approved Form ETA 750.

Counsel asserts that an MBA meets and exceeds the minimum requirement of a bachelor's degree with a major field of study in accounting or finance. Counsel's assertions are persuasive.

The beneficiary's MBA coursework included twelve semester hours of finance classes, a three-semester hour accounting class, and a three-semester hour economics class. Those classes are graduate level classes, and likely encompass more advanced subject matter than an equal number of undergraduate classes. A review of the beneficiary's transcript indicates that she took more courses in the area of finance or accounting than in any other subject. As counsel points out, she took eighteen credit hours in the areas of finance or accounting out of the thirty-six credit hours required for graduation with a master's degree in business administration.



The proffered position requires a bachelor's degree in a major field of study of accounting or finance. The beneficiary has a master's degree with concentrated coursework in accounting or finance. Thus, there is substantial evidence in the record of proceeding that the beneficiary exceeds the stated minimum educational requirements for the proffered position.

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 met that burden.

ORDER: The appeal is sustained. The visa petition is approved.