



U.S. Citizenship  
and Immigration  
Services

B6



FILE: EAC 02 134 52862 Office: VERMONT SERVICE CENTER

Date:

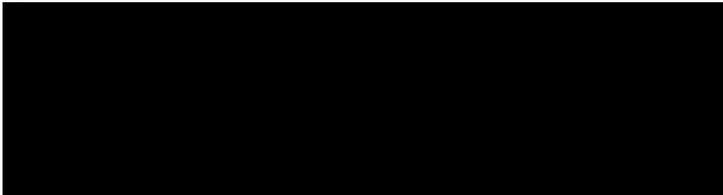
IN RE: Petitioner:  
Beneficiary



MAY 21 2004

PETITION: Immigration 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)

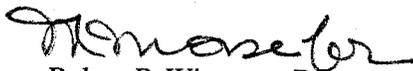
ON BEHALF OF PETITIONER:



Identifying data deleted to  
prevent clearly unwarranted  
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

PUBLIC COPY

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

The petitioner is a specialty apparel retailer. It seeks to employ the beneficiary permanently in the United States as a production coordinator/merchandise manager. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification filed on March 29, 2001, and approved by the Department of Labor on February 27, 2002. The director determined that the petitioner had not established that the beneficiary possessed the required bachelor's degree required in the labor certification application. Counsel has submitted a letter in support of the appeal.

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:

(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 the ETA 750 labor certification. The ETA 750 clearly states that the position requires that the beneficiary have a bachelor's degree in the field of Business Administration, Marketing, or Commerce, and two years of experience working for an apparel company including two years in a production coordination capacity.<sup>1</sup>

In support of the petition, counsel submitted the approved labor certification, a letter from the petitioner's Vice President of Human Resources, a letter from the beneficiary's former employer detailing the beneficiary's experience at Ranjeet Company, an annual report for 2000 for the Limited, Inc., a copy of the beneficiary's degree from India, two education credential evaluations, one from Education International (EI), dated February 26, 1996, and one from Michael Shapiro, Ph.D. dated March 26, 1996.

---

<sup>1</sup> The ETA 750 notes that the experience requirements can be obtained concurrently.

On May 13, 2002, the Service Center requested additional evidence to demonstrate that the beneficiary possessed a bachelor's degree or an equivalent foreign degree. It noted that the evaluation submitted was deficient because it considered both educational background and work experience instead of being limited to formal education evidenced by a United States baccalaureate degree or a foreign equivalent degree, not just a functional equivalent.<sup>2</sup>

In response, counsel submitted a letter and resubmitted the two evaluations. Counsel noted that he was submitting the February 26, 1996 evaluation, which, according to counsel, verified that the beneficiary had obtained the equivalent of a bachelor's degree. Counsel asserted, "[t]hus, while taking only three years to earn the degree, the beneficiary achieved the precise equivalent of the degree required in the labor certification application." (Counsel letter dated August 7, 2002, p.1) Counsel went on to argue that this was consistent with the requirements in the labor certification application as "[t]he requirement was the degree, not the number of years it took to obtain it." (Counsel letter at p.2)

The director determined that the evidence submitted did not establish that the beneficiary has the minimum qualifications for the proffered position and, on November 12, 2002, denied the petition.

On appeal, counsel submitted a letter reiterating his assertion that the evidence demonstrated that the beneficiary has obtained the foreign degree equivalent. Counsel asserts that the denial of the visa petition constitutes a misapplication of law, however, he cites no law in support of his position. The AAO disagrees.

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(l)(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 business administration, 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(l)(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 business administration or an equivalent foreign degree.

Counsel's response to the Request For Evidence emphasizes the evaluation of the beneficiary's credentials conducted by Education International, Inc., which counsel asserts concluded that the beneficiary had achieved the equivalent of a Bachelor's of Business Administration. However, counsel is in error. The evaluation conducted by Education International, Inc. does not state that the beneficiary's degree from the University of Delhi is the equivalent of a United States bachelor's degree. To the contrary, the evaluation provides that the beneficiary "has achieved the equivalent of three years of college in a Business Administration program at an accredited institution in the United States." The evaluator reached this conclusion even while being aware that the beneficiary had obtained a bachelor's degree from India. Thus, counsel's own evaluator does not support the conclusion that the beneficiary has a foreign equivalent degree.

---

<sup>2</sup> Although, as noted, the record contains two evaluations, it appears that the Service Center was referring to the Shapiro evaluation.

It appears, however, that counsel may have been relying instead on the second evaluation submitted in support of the petition, that of [REDACTED] Ph.D., who concluded on March 26, 1996 that, "it is my opinion that [the beneficiary] has achieved the equivalent of a Bachelor's of Business Administration (B.B.A.) Degree in Marketing." (Shapiro evaluation at p.1) Unfortunately, counsel's reliance on this evaluation is also misplaced. The evaluator's conclusion must be read in the context of the factors he considered. The record reflects that it was based on the following three items: 1) a copy of the beneficiary's diploma; 2) a copy of the evaluation conducted by Educational International; and 3) the experience letter offered by Ranjeet & Company which "lists his duties and responsibilities as Senior Merchandiser and Marketing and Sourcing Manager for the period March 17, 1991 to the present time." (Shapiro evaluation at p.1) Based on his review of these factors, the evaluator ultimately provided the following opinion:

. . . the professional duties and responsibilities held by [the beneficiary], and the time successfully spent in these areas since 1991 to the present, including the receipt of his Bachelor of Commerce Degree from the University of Delhi, do indeed indicate that he has the equivalent academic qualifications of someone with an earned Bachelor of Business Administration (B.B.A.) Degree in Marketing.

(Shapiro evaluation at p.3)

Consequently, it is apparent from the evidence that counsel is relying upon a combination of education and experience in support of the claim that the petitioner possesses a foreign equivalent degree. However consideration of the beneficiary's experience applies to non-immigrant H-1B petitions, not to immigrant petitions.<sup>3</sup> Compare 8 C.F.R. § 214.2(h)(4)(iii)(C)(4) with 8 C.F.R. § 204.5(l)(3)(ii)(C). In the case of H-1B petitions, neither the statute nor the regulations allow the substitution of experience, in whole or in part, for the requisite education as stated on an approved labor certification, and counsel has offered no contrary authority.

Even if counsel's position were understood as being simply that a bachelor's degree obtained in less time is sufficient, it is not supported by law or by the evidence in the record. First, the statute and regulations require that a foreign degree be equivalent to a U.S. degree; to ignore this requirement is to modify the legal requirement. Second, the evaluations do not find the beneficiary's degree itself to be an equivalent degree; it has been found only to equate to three years of a comparable U.S. education. Finally, precedent exists that when a foreign degree falls short of the educational requirements of a similar US degree, the petitioner bears the burden to establish that the degree is, in fact, a foreign equivalent. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977) (holding that a bachelor degree is generally found to require four (4) years of education). The only statements in support of a contrary position come from counsel. However, the assertions of counsel are not evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

---

<sup>3</sup> It appears that as the evaluations were prepared in 1996, they were likely submitted in support of the previously filed petition to accord the beneficiary H-1B status.

EAC 02 134 52862

Page 5

In the absence of evidence that the beneficiary has a U.S. bachelor's degree in Business Administration, Marketing or Commerce 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.