



U.S. Citizenship
and Immigration
Services

[REDACTED]

FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER

Date: SEP 24 2004

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:

[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

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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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 software engineering firm. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the petitioner applied and denied the position accordingly.

On appeal, counsel submits a brief.

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 granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 8 C.F.R. § 204.5(l)(2) states, in pertinent part:

“Professional means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.”

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

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.

If the petition is for a professional pursuant to 8 C.F.R. § 204.5(l), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted for processing on November 24, 1999. The Form ETA 750 states that the proffered position requires a Bachelor of Science degree in computer science, engineering, math, or physics.

The Form ETA 750, Part B, signed by the beneficiary, states that between September of 1974 and August of 1977, he earned a bachelor's degree in electronic engineering from Guizhou University in Guiyang, Guizhou, China. It also states that the beneficiary studied computer technology at Guizhou Science and Technology Advanced Study Center, also in Guiyang, from September 1983 to July 1984, and earned a certificate of completion. Finally, the form states that the beneficiary studied computer science at Augustana University College in Camrose, Alberta, Canada, from September 1994 through May 1995, but earned no degree there.

In support of the proposition that the beneficiary meets the minimum requirements of the proffered position as stated on the Form ETA 750, counsel submitted an educational evaluation, dated March 28, 2003, from a professor at Seattle Pacific University. That evaluation states that, in the opinion of that professor, the

beneficiary's three-year bachelor of science degree, his additional education at the Guizhou Science and Technology Advanced Study Center and at Augustana University College, taken together, are the equivalent of a four-year bachelor's degree in computer science from a college or university in the United States.

A letter in the record from Guizhou University, dated June 15, 1992, states that the beneficiary studied there from September 1974 through August 1977 and completed and passed all requisite courses and examinations. The letter continues that, because the University degree system was abolished for political reasons during that time, the beneficiary, like all other graduates, did not receive a bachelor's degree. The letter also states that the beneficiary mastered the necessary knowledge, deserves a bachelor's degree, and should be considered to have the equivalent of a bachelor's degree. That letter purports to be from China, but is written in English. Whether that letter is a translation is unclear. If the letter is a translation, it is not accompanied by the original and does not contain a certification that the translator is competent to translate from Chinese to English and that the translation is complete and accurate.

Because the evidence submitted was insufficient to demonstrate that the beneficiary meets the education requirement for the proffered position as stated on the Form ETA 750, the Nebraska Service Center, on May 21, 2003, requested additional evidence pertinent to the beneficiary's education. The Service Center requested evidence sufficient to demonstrate that the beneficiary has a United States four-year baccalaureate degree in computer science, engineering, math or physics, or an equivalent foreign degree,

In response, counsel argued that the evidence previously submitted demonstrates that the beneficiary has the equivalent of a four-year bachelor's degree in computer science. In support of the position that the evidence demonstrates that the beneficiary meets the requirements stated on the Form ETA 750, counsel cites two letters, dated January 7, 2003 and July 23, 2003 from the Director of Business and Trade Services at Citizenship and Immigration Service, copies of which he submitted for the record.

The director determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree, and, on May 3, 2004, denied the petition.

On appeal, counsel renews his argument that the petitioner's college degree, coupled with his subsequent study, are equivalent to a U.S. four-year bachelor's degree. Counsel again refers to the letters from the Director of Business and Trade Services at CIS.

Another letter in the record, to which the January 7, 2003 letter refers, indicates that the director's letter was written in response to a question about the language in 8 C.F.R. § 204.5(k) pertinent to aliens who are members of the professions holding advanced degree. As such, that letter addresses that language, and not the language of 8 C.F.R. § 204.5(1)(3)(ii)(C). Further, neither letter states or implies that a bachelor's degree may be combined with other education that did not lead to a degree, to be counted, in the aggregate, as the equivalent of an advanced degree. Neither do those letters state or imply that a three-year bachelor's degree, combined with other education that did not lead to a degree, may be counted as a four-year bachelor's degree. Finally, even if those letters were on point and supported the petitioner's position, they are not binding on the adjudications of this office.

Counsel argues that the beneficiary's three-year degree, coupled with his subsequent studies, which did not lead to a degree, are the equivalent of a four-year bachelor's degree. That argument, although supported by the educational evaluation submitted, is inapposite. The regulations pertinent to the visa category for which the petitioner has applied do not permit the appending of additional education to the petitioner's degree to render it equivalent to a four-year bachelor's. The beneficiary has only one degree, if any. The petition stands or falls on the issue of whether that supposed degree is equivalent to a U.S. four-year bachelor's.

The June 15, 1992 letter from Guizhou University specifically states that the beneficiary did not receive a bachelor's degree. Further, it indicates that the beneficiary pursued a three-year course of study there, rather than a four-year course. As such, that degree, even if it were a bachelor's degree, would not be the equivalent of a U.S. four-year bachelor's degree.

To determine whether a beneficiary is eligible for a third preference visa, CIS must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. In evaluating the beneficiary's qualifications CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. See *Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). See also *Mandany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has a United States baccalaureate or an equivalent foreign degree. The instant petition, submitted pursuant to 8 C.F.R. §204.5(I), 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.