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U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: SEP 30 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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 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, California Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a distributor of computer systems and components firm. It seeks to employ the beneficiary permanently in the United States as a procurement engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary had the education required by the Form ETA 750, a bachelor's degree or its equivalency.

On appeal, counsel states that no statute or regulation prohibits the consideration of work experience as part of the equivalency for a bachelor's degree.

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 who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 204.5(d). In this instance, it is May 30, 2001.

The Form ETA 750 indicated that the position of procurement engineer requires a bachelor's degree in "CS, CT, Marketing or related," or its equivalency.

In support of the petition, the petitioner submitted a copy of the beneficiary's Associate in Arts degree dated June 1984 from the College of the Redwoods, Eureka, California, with the beneficiary's course transcript; copies of letters from three former employers of the beneficiary dated August 20, 1998, May 5, 1999, and May 12, 1999; a copy of an Evaluation Report dated April 6, 1998 from the Foundation for International Services; a copy of the petitioner's Form 7004 Application for Automatic Extension to File Income Tax Return for the year 2001; a copy of the petitioner's Form 1120 U.S. Corporation Income Tax Return for 2000, for the tax year April 1, 2000 to March 31, 2001; copies of the petitioner Form DE-6 California quarterly wage reports for the last quarter of 2001 and the first quarter of 2002; and copies of the beneficiary's Form W-2 wage and tax statements showing compensation from the petitioner for 1999, 2000 and 2001. The petitioner also submitted a copy of the AAO decision in case number EAC9120950669, dated April 11, 1994.

Because the evidence submitted was deemed insufficient to establish that the beneficiary had a bachelor's degree or the equivalent as of the priority date, the director, on February 19, 2003, issued a notice of intent to deny (ITD). In response to the ITD counsel submitted a letter dated March 7, 2003 accompanied by a photocopy of the ETA 750 labor certification in the instant case; additional copies of the FIS evaluation report, the beneficiary's AA degree and transcript and the three letters from former employers of the beneficiary; a copy of the instant I-140 petition; and a copy of the AAO decision in case number WAC9312250652.

In a decision dated April 9, 2003, the director determined that the evidence did not establish that the petitioner had a bachelor's degree in "CS, CT, Marketing or related," or its equivalency as of the priority date, as required on the ETA 750, and denied the petition.

On appeal, counsel submits a copy of a page apparently printed from the Internet web site of the Foundation for International Services, Inc.; a copy of the regulation at 8 C.F.R. § 212.2(h)(4)(iii)(D); copies of decisions of the AAO in case numbers SRC-N-18109, HOV-N-23287, and SRC-N-9085; and additional copies of other documents previously submitted for the record.

On appeal, counsel states that no statute or regulation prohibits the consideration of work experience as part of the equivalency for a bachelor's degree. Counsel states that in the absence of any statute or regulation to the contrary, the opinion of an expert in educational evaluations should prevail. Finally, counsel states that prior decisions of the AAO have allowed work experience to be considered as part of the equivalence of a bachelor's degree both in nonimmigrant petitions and in immigrant petitions.

The AAO will first evaluate the decision of the director, based on the evidence submitted prior to the director's decision. The evidence submitted for the first time on appeal will then be considered.

The Form ETA 750 states in block 14 that the minimum degree requirement for the offered position is "Bachelor or equivalency." The major field of study is stated as "CS, CT, Marketing or related." The ETA 750 contains no definition of the term "equivalency." Block 15 of the ETA, for Other Special Requirements, states simply "N/A."

The record indicates that the beneficiary holds an Associate of Arts degree from a United States college, granted in June 1984, and has subsequent work experience in Japan, Taiwan, Hong Kong and the United States.

The evaluation report dated April 6, 1998 from the Foundation for International Services states,

In summary, it is the judgment of the Foundation that [the beneficiary] has an associate's degree in electronics and microcomputers from an accredited community college in the United States and has, as a result of his educational background and progressively more responsible employment experiences (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in marketing and computer technology from an accredited college or university in the United States.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept that evidence, or may give less weight to it. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The petitioner's documentation includes a copy of the decision of the AAO in case number WAC9312250652. That case is a non-precedent decision dated August 5, 1994. Only decisions which have been designated as precedent decisions are binding on CIS in evaluating later decisions. *See* 8 C.F.R. § 103.3(c). The decision in WAC9312250652 found that education and experience could be combined for purposes of finding the equivalent of a bachelor's degree required on an ETA 750. In that case the Commissioner found that the evidence did not establish that the beneficiary qualified as a professional, and evaluated the petition as one for a skilled worker. The Commissioner found that a combination of education and experience could be combined in evaluating the requirement on the ETA 750 for a bachelor's degree or its equivalent.

With regard to the preference category, the Form I-140, Part 2, Petition Type, does not distinguish between skilled workers and professionals, for a single check box applies both to skilled workers and to professionals. Nonetheless, even if the instant petition is considered as a petition for a skilled worker, the requirements as stated

on the ETA 750 for a bachelor's degree or the equivalent would be unaffected. The non-precedent decision in WAC9312250642 fails to specify any set of criteria to evaluate a bachelor's degree equivalence where a petitioner is considered as one for a skilled worker, but requiring a bachelor's degree or its equivalent.

The only regulation specifying the equivalent of a bachelor's degree in the context of immigrant petitions is one which pertains to professionals. 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.

Skilled worker means an alien who is capable, at the time of petitioning for this classification, 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. Relevant post-secondary education may be considered as training for the purposes of this provision.

No provision pertaining to skilled workers specifies the equivalent to a bachelor's degree. Therefore even if it were assumed that the petition is for a skilled worker, the petition would thereby lack any criteria by which to evaluate what is to be considered equivalent to a bachelor's degree. The petitioner was free to specify on the Form ETA 750 the qualifications that it would accept as equivalent to a bachelor's degree, but the petitioner chose not to do so. The director was therefore correct in treating the petition as one for a professional, and in using the criteria in the regulation at 8 C.F.R. § 204.5(l)(2) to evaluate the term "or equivalent" in the labor certification.

The educational evaluation in the record does not find that the beneficiary holds a foreign equivalent degree. Rather the evaluation relies on a combination of the beneficiary's education and employment experience in finding that the beneficiary has the equivalent of a bachelor's degree. Moreover, in calculating the equivalent education from the beneficiary's experience the report uses the formula of "3 years of experience = 1 year of university-level credit." That formula is applicable to nonimmigrant petitions, but it is not applicable to immigrant petitions. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5).

Regardless of whether the petition sought classification of the beneficiary as a skilled worker or as a professional, the beneficiary had to meet all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary had a bachelor's degree on April 16, 2001 or a foreign equivalent degree.

In his decision the director found that the educational evaluation in the record relied on the beneficiary's associate's degree and on his work experience in finding that the beneficiary had the equivalent to a United States bachelor's degree. The director found that neither the statute nor the regulations allow for work experience to substitute for a bachelor's degree in immigrant petitions. The director's analysis was correct, and the director therefore correctly denied the petition, based on the evidence then in the record.

On appeal, counsel the only evidence newly submitted consists of a page apparently printed from the Internet web site of the Foundation for International Services, Inc.; a copy of the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D); copies of decisions of the AAO in case numbers SRC-N-18109, HOV-N-23287, and SRC-N-9085. The information about the Foundation for International Services, Inc. includes descriptions of that organization's experience and expertise in evaluating education qualifications. The qualifications of the Foundation for International Services, Inc., are not at issue in the instant petition, therefore the information about that

organization is not relevant to the instant appeal. The other documents newly submitted on appeal are copies of legal authorities. The regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D) pertains to non-immigrant petitions. Therefore that regulation is not applicable to the instant petition. Similarly, the three cases for which copies are submitted each pertain to non-immigrant petitions. For that reason, the analysis in none of those cases may be used to guide the analysis in the instant petition.

The evidence and other materials submitted for the first time on appeal therefore fail to overcome the director's decision.

The issue is whether the beneficiary met all of the requirements stated by the petitioner in block 14 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary had a bachelor's degree or a foreign equivalent degree on May 30, 2001. Therefore, the petitioner has not overcome this portion of the director's decision.

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.