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U.S. Citizenship
and Immigration
Services

RB

FILE:

[REDACTED]
EAC-03-070-52756

Office: VERMONT SERVICE CENTER

Date: APR 14 2005

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
Robert P. Wiemann, Director
Administrative Appeals Office

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 manufactures and sells energy products and services. It seeks to employ the beneficiary permanently in the United States as a database administrator. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he determined that the beneficiary did not present evidence that he had the foreign equivalent of a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification and submits additional evidence.

In pertinent part, 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 or seasonal nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of 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)(3)(ii)(C) states the following:

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.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). In this case, that date is November 29, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of database administrator. In the instant case, item 14 describes the requirements of the proffered position as follows:

14. Education
Grade School

High School	
College	4
College Degree Required	Bachelor's or equivalent
Major Field of Study	Computer Science

The applicant must also have two years of employment experience in the job offered. Additionally, Item 15 requires applicants to have experience with "Oracle databases, related utilities and tools and the underlying Operating Systems, Windows NT 4.0/200."

The beneficiary set forth his credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), he indicated that he received a high school diploma after two years of high school studies at DAV College, in Haryana, India, from August 1990 to May 1992. After that he received a Bachelor of Science degree in Computer Science after attending Kurukshetra University in Kurukshetra, India, from August 1993 to June 1996. The beneficiary also indicated that he received a Post Graduate Diploma Computer in Computer Applications after attending Bhartiya Institute of Information Technology (BIIT) in Ambala City, India from June 1996 to May 1997. The beneficiary also lists two certifications in various database applications.

Because the evidence was insufficient, the director requested additional evidence on March 13, 2003, specifically requesting a credential evaluation that only considered formal education.

In response to the director's request for evidence, the petitioner provided a credential evaluation from Cultural House, Inc., that considered the beneficiary's bachelor degree, post graduate diploma, and computer training certificates to determine that the beneficiary's credentials "as a result of [the beneficiary's] formal education, [are] the equivalent of an individual with the Degree, Bachelor of Science with a double major: Physics and Computer Science, from an accredited institution of higher education in the U.S."

The director denied the petition on July 17, 2003, stating that the beneficiary's three-year degree is not the "functional equivalent" to the four-year bachelor's degree delineated as the educational requirement, without annotation permitting a combination of various educational programs, on the Form ETA 750A.

On appeal, counsel asserts that the beneficiary's credentials are sufficient to meet the requirements of the labor certification. Counsel bases his assertions on statements made in internal CIS memoranda and AILA (American Immigration Lawyer's Association) teleconference minutes pertaining to the employment-based second preference petitions for advanced degree professionals. The AAO deems those legal authorities irrelevant to these proceedings since the instant petition sought categorization in the third preference employment-based immigrant visa category. Counsel does not cite to legal authority that covers the third preference visa category for skilled workers or professionals.

Both regulatory provisions governing the two third preference visa categories clearly require that the petitioner submit evidence of the beneficiary's bachelor's degree or foreign equivalent – for a "professional" because the regulation requires it and for a "skilled worker" because the regulation requires that the beneficiary qualify

according to the terms of the labor certification application in addition to proving a minimum of two years of employment experience.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), guiding evidentiary requirements for “professionals,” states the following:

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.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for “skilled workers,” states the following:

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.

Thus, for petitioners seeking to qualify a beneficiary for the third preference “skilled worker” category, the petitioner must produce evidence that the beneficiary meets the “educational, training or experience, and any other requirements of the individual labor certification” as clearly directed by the plain meaning of the regulatory provision. And for the “professional category,” the beneficiary must also show evidence of a “United States baccalaureate degree or a foreign equivalent degree.” Thus, regardless of category sought, the beneficiary must have a bachelor’s degree or its foreign equivalent.

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). In the instant case, 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 or the equivalent in computer science.

The petitioner has not established that the beneficiary is qualified for the proffered position. In this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U.S. baccalaureate degree is generally found to require four

years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a United States baccalaureate degree. *Id.* at 245. *Shah* applies regardless of whether or not the petition was filed as a skilled worker or professional.

The regulations define a third preference category "professional" as 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." See 8 C.F.R. § 204.5(1)(2). The regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

If supported by a proper credentials evaluation, a four-year baccalaureate degree from India could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, the record reflects that the beneficiary's formal education consists of less than a four-year curriculum. The evaluation submitted with the evidence in this proceeding suggesting that the beneficiary's certificates from various schools should be considered as the equivalent of a baccalaureate degree is not accepted as competent and probative evidence that the beneficiary holds a foreign equivalent degree to a United States bachelor's degree because it includes multiple educational degrees and certifications in the evaluation. Unlike the temporary non-immigrant H-1B visa category for which promulgated regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) permits equivalency evaluations that may include a combination of education and training and work experience, no analogous regulatory provision exists for permanent immigrant third preference visa petitions.

Additionally, the petitioner has not indicated that a combination of education and experience can be accepted as meeting the minimum educational requirements stated on the labor certification, or that experience could be accepted in lieu of educational accolades. Thus, the combination of educational programs may not be accepted in lieu of one four-year baccalaureate degree program that is deemed equivalent to a four-year baccalaureate degree program from an accredited institution in the United States. The beneficiary was required to have a bachelor's degree or an equivalent foreign degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses a bachelor's degree as required by the terms of the labor certification.

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.