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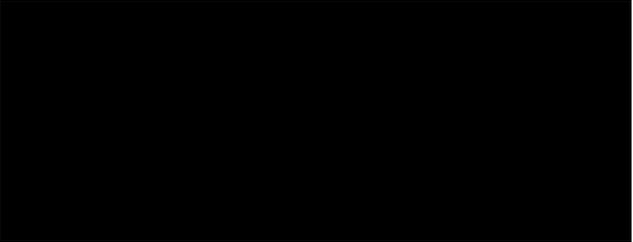


U.S. Citizenship  
and Immigration  
Services

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APR 20 2008



FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date:  
WAC 03 116 50136

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

**DISCUSSION:** The employment-based immigrant 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 manufacturer of chemical detectors for environmental and medical applications. It seeks to employ the beneficiary as a manufacturing test engineer. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, counsel asserts that the beneficiary has the necessary educational credentials to meet the qualifications set forth in the approved labor certification and should have been approved as at least a “skilled worker.”

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

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 nature, for which qualified workers are not available in the United States.<sup>1</sup>

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. *See* 8 C.F.R. 204.5(d); *Matter of Wing’s Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is June 7, 2000.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, Citizenship and Immigration Services (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 a manufacturing test engineer. In the instant case, item 14 requires a Bachelor of Science degree or equivalent in electrical engineering, engineering, or equivalent field of study. Item 15 designates other special requirements. In this case it includes skills in “photo ionization detection (PID) gas monitoring instruments, chemical separation tubes with PID sensor, toxic gas calibration method, C programming, and analog and digital electronics hardware.”

As evidence of the beneficiary’s formal education, the petitioner initially submitted insufficient evidence of the beneficiary’s educational credentials. On April 23, 2003, the director requested additional evidence establishing that the beneficiary has the required baccalaureate degree as of the priority date of June 7, 2000.

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<sup>1</sup> The regulation at 8 C.F.R. § 204.5(l)(2) also states that an alien beneficiary’s relevant post-secondary education may be considered as training for the purpose of determining whether he or she has met the requirements for designation as a *skilled worker*.

The director also instructed the petitioner to provide a copy of any degree received, as well as a college or university transcript. The director further advised the petitioner that any academic evaluation must consider only formal post-secondary education and not experience.

In response, counsel submitted a document from the Shanghai Medicine School, Shanghai, People's Republic of China. According to the English translation provided, document is dated July 1989 and certifies that the beneficiary completed a two-year program in "medical instrument" in July 1989. Counsel also provided a grade transcript and a copy of a diploma from Northwestern Polytechnic University in Fremont, California indicating that the beneficiary also obtained a Bachelor of Science in Electrical Engineering on April 22, 2001.

In response to the director's request for evidence, counsel also supplied an "evaluation report," dated January 22, 1996, from [REDACTED] of the Foundation for International Services, Inc. According to [REDACTED] the beneficiary's formal education at the Shanghai Medicine School represents the equivalent of two years of university-level credit at an accredited U.S. college or university. [REDACTED] then concludes that a combination of the beneficiary's studies at the Shanghai Medicine School and the beneficiary's work experience (3 years of experience = 1 year of university) is the equivalent of someone with a bachelor's degree in "electronic engineering technology" from an accredited institution in the United States.

The director denied the petition on June 16, 2003. The director found that the evidence submitted did not meet the requirements of the approved labor certification because the beneficiary did not possess a U.S. Bachelor of Science or an equivalent foreign degree as of the priority date of June 7, 2000.

On appeal, the counsel resubmits a copy of [REDACTED] evaluation, various copies of employer verification letters, and a letter from the president of the petitioner, who contends that the labor certification verbiage was meant to allow an equivalency to a U.S. baccalaureate degree as being a combination of work experience and academic education.

Counsel endorses the petitioner's interpretation of the approved labor certification and states that the term "equivalent" can mean an equivalent combination of work and experience to a U.S. Bachelor of Science degree. Counsel also argues that the Department of Labor approved the labor certification on the basis that the beneficiary has met the conditions outlined in Item 14 and Item 15. Counsel maintains that the education evaluation and the beneficiary's credentials support the conclusion that the his qualifications are sufficient to establish that he has the combined formal education and experience to qualify for visa classification as either a "professional" under 203(b)(3)(A)(ii) of the Act or as a "skilled worker" under 203(b)(3)(A)(i) of the Act.

Counsel's contention is not persuasive. The AAO notes that the Department of Labor's function in determining whether the hiring of an alien for a certified position will adversely affect the wages and working conditions of similarly employed domestic U.S. workers does not impact the jurisdiction of CIS to review whether a petitioner is making a realistic job offer by evaluating the qualifications of a beneficiary for the job. CIS is empowered to make a de novo determination of whether the alien beneficiary is qualified to fill the certified job and receive entitlement to third preference status. *See Tongatapu Woodcraft Hawaii, Ltd. v. INS*, 736 F.2d 1305, 1308 (9<sup>th</sup> Cir. 1984).

In evaluating the beneficiary's qualifications, CIS reviews the job offer portion of the labor certification to determine the required qualifications for the position. CIS may, in its discretion, use advisory opinions

such as [REDACTED]'s report, as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, the Service is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988). CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

The regulation at 8 C.F.R. § 204.5(1)(3)(ii)(C) also provides in pertinent part:

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 member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for an entry into the occupation.

The AAO finds that “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration or study” is applicable to what constitutes evidence of a degree. Because neither the Act nor the regulations indicate that a bachelor’s degree must be a United States bachelor’s degree, CIS will recognize a foreign equivalent bachelor’s degree to a United States baccalaureate. The above regulation uses the singular description of a foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that, when the visa classification sought is that of a professional, 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 for third preference visa category purposes. In this case, the beneficiary received his Bachelor of Science degree almost a year after the priority date of June 7, 2000. Thus, he had not obtained the requisite academic degree as of the date of filing. A petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. *See* 8 C.F.R. § 103.2(b)(12).

Even if viewed as a petition for a skilled worker, the regulation at 8 C.F.R. § 204.5(1)(3)(ii)(B) provides that the evidence must show that the alien has the *education, training or experience, and any other requirements of the individual labor certification*. (Emphasis supplied). It is further noted that “employment” is defined as permanent full-time work by an employee for an employer other than oneself. *See* 20 C.F.R. § 656.3. It follows that employment experience is distinct from academic requirements. Moreover, unless unambiguously set forth on the labor certification, the only substitution in this classification that may be applicable, as noted by 8 C.F.R. § 204.5(1)(2), *supra*, is that of relevant post-secondary education for specified training requirements. Here, CIS interprets the Form ETA 750A as requiring either a U.S. or a foreign equivalent baccalaureate degree, to be shown by an official college or university record giving the date the degree was awarded and the major field of study showing that such degree was attained by the priority date. It is also noted that a bachelor’s degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the combination of education and experience may not be accepted in lieu of a four-year degree.

The AAO concurs with the director’s conclusion and rejects the suggestion that a combination of the beneficiary’s academic studies at the Shanghai School and his work experience satisfies the terms of the

labor certification in requiring college studies culminating in a Bachelor of Science degree or equivalent. A labor certification clearly distinguishes between academic requirements, training, and experience in the job offered. Counsel's assertion that the formula of equating three years of work experience to one year of education should be applied here is misplaced. As noted by the director, that definition applies to non-immigrant H1B petitions, not to immigrant petitions.

Counsel cites a 1992 and 1993 AAO case in support of her assertion that a combination of education and experience can be considered to be the equivalent of a U.S. baccalaureate degree. The facts of those cases are not before the AAO in the instant matter. Moreover, they are not considered binding precedents within the regulation(s) at 8 C.F.R. § 103.3(c) and 8 C.F.R. § 103.9(a), which provide that decisions designated as precedent decisions must be published in bound volumes or as interim decisions.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses the foreign equivalent of a United States Bachelor of Science degree or attained the requisite degree as of the priority date of June 7, 2000.

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 sustained that burden.

**ORDER:** The appeal is dismissed.