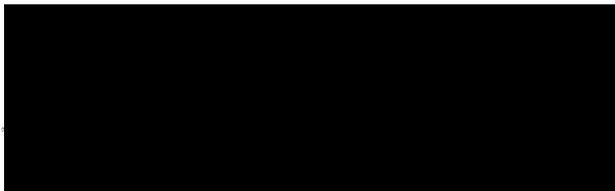


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U.S. Citizenship
and Immigration
Services



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FILE: EAC 01 105 52923

Office: VERMONT SERVICE CENTER

Date:

JAN 24 2005

IN RE:

Petitioner:

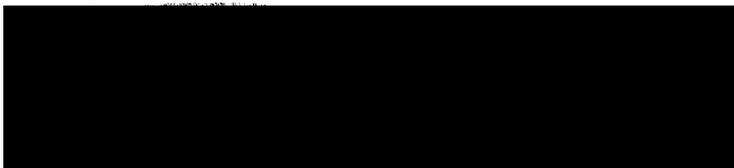
Beneficiary:



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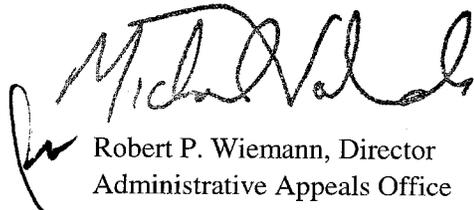
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



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, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a managed health care provider. It seeks to employ the beneficiary permanently in the United States as a technical lead. 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 and additional evidence.

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.

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 granting 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.

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 December 31, 1998. The Form ETA 750 states that the proffered position requires four years of college culminating in a bachelor's degree in computer science or electrical engineering and five years of experience in the job offered or in a related occupation.

With the petition, the petitioner submitted a diploma from the University of Madras, India, showing that it had awarded the beneficiary a bachelor of science in mathematics in March of 1987, and a diploma from the National Institute of Information Technology (NIIT) showing that it had awarded the beneficiary that diploma

for a year of postgraduate study in systems management. The petitioner submitted a report, dated October 25, 2000, from a credential evaluation firm. That report states that, in the opinion of the evaluator, the petitioner's education is the equivalent of a Bachelor of Science degree in computer science from a U.S. university.

Although the Service Center issued a Request for Evidence on August 6, 2001, neither the evidence requested nor the evidence submitted in response are relevant to the decision of denial. On June 3, 2002, the Director, Vermont Service Center, determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree and denied the petition.

On appeal counsel submitted the report, dated August 6, 1998, of another educational evaluator. That report also states that the beneficiary's education and degrees from the University of Madras and NIIT, in the aggregate, are the equivalent of a U.S. bachelor's degree in computer science. The petitioner also submits a brief from its counsel.

The petitioner's counsel asserts that the evidence is sufficient to demonstrate that the beneficiary is qualified for the proffered position. The petitioner's counsel also states, possibly in the alternative, that issuing the decision of denial based on grounds of which the petitioner was accorded no notice violates CIS practice and custom. Counsel's assertion appears to imply that if the evidence was insufficient to warrant approval of the petition, the Service Center was obliged to issue a request for evidence pertinent to that insufficiency prior to issuing a decision.

Counsel cites no statute or regulation requiring CIS to issue a Request for Evidence before issuing a decision of denial and this office is aware of none. Although counsel implies that CIS always does so, that implicit assertion is incorrect. CIS is not obliged, either by statute, regulation, or universal practice to issue a Request for Evidence where the evidence shows that the beneficiary is ineligible for the proffered position. That argument will not be further addressed.

Counsel's remaining argument is that the evidence shows that the beneficiary is qualified for the proffered position. As was noted above, the Form ETA 750 clearly states that a bachelor's degree in computer science or electrical engineering is a requirement of the position.

The evaluations submitted state that the beneficiary's Bachelor of Science degree in mathematics and his diploma for a year of postgraduate study in systems management are the equivalent, in the aggregate, of a U.S. bachelor's degree in computer science. That evaluation does not state that either of the two diplomas, in itself, is the equivalent of a bachelor's degree in computer science,¹ but only that the study required to receive those degrees, added together, is equivalent to the study required to obtain a bachelor's in computer science in the United States.

¹ If the petitioner had argued that either of those diplomas, in itself, is the equivalent of a U.S. bachelor's degree, that argument would not have been well received. A U.S. bachelor's degree requires four years of study. One of those degrees represents a three-year course of study. The other represents a one-year course. Further, the three-year degree is in mathematics, rather than computer science.

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.” [Emphasis supplied.] See 8 C.F.R. § 204.5(1)(2). The regulation at 8 C.F.R. § 204.5(1)(3)(ii) specifies for the classification of professional that:

(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 showing that the minimum of a baccalaureate degree is required for entry into the profession.

[Emphasis supplied.]

The above regulations describe the foreign degree in the singular. 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 the third preference visa category purposes.

The Form ETA 750 requires a bachelor’s degree in computer science or electrical engineering. A bachelor’s degree generally requires four years of education. *Matter of Shah*, 17, I&N Dec. 244 (Reg. Comm. 1977). Neither experience, nor a combination of degrees, nor a combination of a degree and experience, may be substituted for the requisite bachelor’s degree or equivalent foreign degree.

Counsel argues on appeal that “no basis in fact or law” exists for this “overdiscriminatory and quibbling standard.” Notwithstanding counsel’s strident assertion the regulation shall be enforced as written.

The regulations explicitly allow substitution of a foreign degree that is the equivalent of a United States bachelor’s degree. The record contains no evidence that the beneficiary has a United States bachelor’s degree. The petitioner is obliged to show, therefore, that the beneficiary has a foreign degree, which is the equivalent of a United States bachelor’s degree.

This office notes that if the petition were analyzed as a petition for a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act rather than a professional pursuant to section 203(b)(3)(A)(ii) of the Act the result would be unchanged. In order to support approvability of a petition for a skilled worker the petitioner is obliged to submit evidence that the beneficiary possesses the requirements shown on the ETA 750. Again, the Form ETA 750 states that the proffered position requires a bachelor’s degree in computer science or electrical engineering.

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(1), may not be approved.

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Page 5

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.