

Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B6

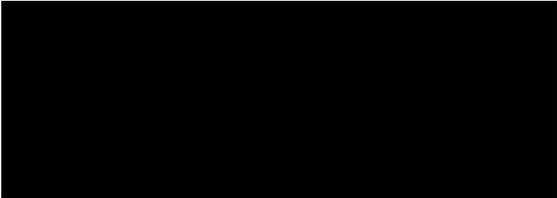


FILE: WAC 02 210 52936 Office: CALIFORNIA SERVICE CENTER Date: JAN 25 2005

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:



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 on appeal. The appeal will be dismissed.

The petitioner is a PCB design and production company. It seeks to employ the beneficiary permanently in the United States as a hardware 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 statement 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 November 29, 1999. The Form ETA 750 states that the proffered position requires a Bachelor of Science degree in “electric engineering automation.”

With the petition counsel submitted a cover letter dated June 11, 2002 in which he stated that a copy of the beneficiary’s diploma and transcripts was enclosed. No transcripts or diploma accompanied the petition and cover letter.

Because the evidence submitted was insufficient to demonstrate that the beneficiary has a baccalaureate degree, the California Service Center, on October 29, 2002, requested, *inter alia*, additional evidence pertinent to the beneficiary's education. The Service Center specifically requested evidence, on the beneficiary's school's letterhead, of the classes the beneficiary took, and a legible copy of the petitioner's diploma.

In response counsel submitted various documents in Chinese with English translations. One translation, labeled "DIPLOMA" and dated July 1987, states that the beneficiary studied a three-year course in electric (sic) engineering automation from September 1984 to July 1987 and qualified to graduate. Another translation, labeled "DIPLOMA" and dated December 1991, states that the beneficiary studied a two-year course in English from September 1988 to July 1991 and qualified to graduate. None of the translations submitted appear to be the beneficiary's transcript.

In response to another request from the Service Center, not relevant here, counsel provided evidence pertinent to the beneficiary's employment history.

Counsel also submitted the report of an evaluation service stating that the beneficiary's education and employment experience, taken together, are the equivalent of a bachelor's degree in Quality and Production Engineering.

On February 10, 2003 and May 7, 2003, the California Service Center issued additional requests for evidence. The evidence requested therein, however, and the evidence presented in response, are not relevant to the basis of the denial of the petition.

On July 26, 2003 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 denied the petition.

On appeal, counsel submits a transcript and translation. The translation shows that the beneficiary achieved 59.4 semester hours of study. Counsel also submits a second credential evaluation. That evaluation, dated August 20, 2003, states that the beneficiary's degrees are equivalent to a bachelor's degree in electrical engineering and an associate's degree in English. Counsel notes that the evaluation is based on the beneficiary's education alone, and does not include his employment experience.

The first evaluation submitted included the beneficiary's employment experience in determining that he has the equivalent of a bachelor's degree. The laws and regulations applicable to the visa category in the instant case, and to immigrant visa categories in general, sanction no substitution of experience in lieu of education and a degree. The first evaluation, therefore, is insufficient to demonstrate that the beneficiary has the education and degree required by the Form ETA 750.

The second evaluation does not include the beneficiary's employment experience. That evaluation concludes, on the basis of the beneficiary's education alone, that he has the equivalent of a bachelor's degree in electrical engineering. However, the petitioner's degree, which the evaluation finds to be the equivalent of a U.S. bachelor's degree in electrical engineering, is a three-year degree, rather than a four-year degree.

The AAO 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, the AAO is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

The Form ETA 750 states that the proffered position requires a Bachelor of Science degree in electric engineering automation. A foreign three-year bachelor's degree is not a "foreign equivalent degree" to a United States bachelor's degree. A United States bachelor's degree generally requires four years of education. *Matter of Shah*, 17, I&N Dec. 244 (Reg. Comm. 1977). The petitioner's three-year degree cannot, therefore, be considered the equivalent of a U.S. bachelor's degree for the purpose of the instant petition.

Further, the beneficiary's three-year degree and his additional year of study cannot be combined to satisfy the requirement of a foreign degree equivalent to a U.S. bachelor's degree.

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(l)(2). The regulation at 8 C.F.R. § 204.5(l)(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 electric engineering automation. 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.

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. Nothing indicates that the beneficiary has such a degree or an equivalent foreign degree.

The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree. The instant petition, submitted pursuant to 8 C.F.R. §204.5(1), 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.