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U.S. Citizenship
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FILE:



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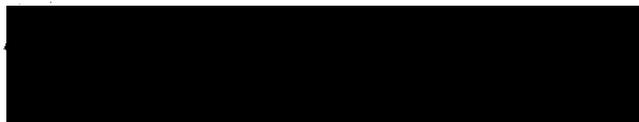
Office: NEBRASKA SERVICE CENTER

Date: JUN 07 2005

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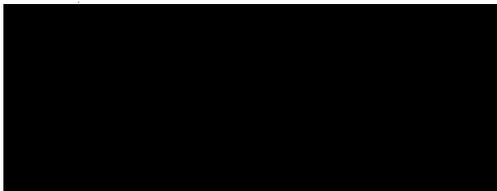
Petitioner:

Beneficiary:



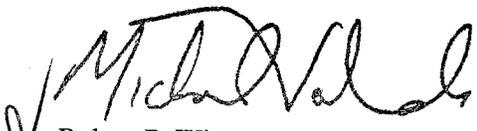
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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

The petitioner is a multinational insurance company. It seeks to employ the beneficiary permanently in the United States as a risk and insurance manager. 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.

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 are members of the professions.

The regulation at 8 C.F.R. § 204.5(1)(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 September 6, 2002¹.

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 risk and insurance manager. In the instant case, item 14 describes the requirements of the proffered position as follows:

| | | |
|-----|--------------|---|
| 14. | Education | |
| | Grade School | 8 |
| | High School | 4 |

¹ Although the ETA 750A indicates a local office receipt date on February 1, 2002, the Department of Labor used the September 6, 2002 date as the "date of acceptance for processing" on its final certification.

| | |
|-------------------------|--------------------------|
| College | 4 |
| College Degree Required | BA/BS Marine Engineering |
| Major Field of Study | Engineer or equivalent |

The applicant must also have two years of employment experience in the job offered or the related occupation of risk and loss prevention “or related.” Additionally, Item 15 sets forth the other special requirements of “Authorized Boiler and Pressure Vessel Inspector for Idaho[,] Washington[, and] Oregon,” and “National Board Boiler and Pressure Vessel Inspection Certified.”

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 attended the Singapore Polytechnic in Singapore in the field of Marine Engineering from June 1983 through May 1986, culminating in the receipt of a “Degree in Marine Engineering.” He provides no further information concerning his educational background on this form, which is signed by the beneficiary under a declaration under penalty of perjury that the information was true and correct.

In corroboration of the Form ETA-750B, the petitioner provided copies of the beneficiary’s diploma in Marine Engineering issued by Singapore Polytechnic in 1986, along with transcripts, the beneficiary’s resume, and various professional certificates issued to the beneficiary from Singaporean professional societies. The petitioner also provided copies of certificates of competency issued by the states of Oregon and Georgia reflecting that the beneficiary is certified to inspect boiler and pressure vessels, as well as a similar national certification issued by the National Board of Boiler and Pressure Vessel Inspectors.

A credential evaluation drafted by Globe Language Services, Inc. (Globe credential evaluation) was also initially submitted with the petition and stated, without elucidation, that the beneficiary’s diploma from Singapore Politechnic was the “U.S. [e]quivalent [of t]hree years of undergraduate study,” combined with his associate membership in Singapore’s Institute of Marine Engineers was the “U.S. equivalent [of a] Bachelor’s Degree in Marine Engineering.”

Because the evidence was insufficient, the director requested additional evidence on September 12, 2003, specifically requesting evidence that the beneficiary was an authorized boiler and pressure vessel inspector for Idaho and Washington and had two years of experience as a risk and insurance manager or in an occupation related to risk and loss prevention as of the priority date. The director noted that the petitioner could not combine the beneficiary’s credentials to show that the beneficiary holds a bachelor’s degree equivalent to a U.S. bachelor’s degree and requested additional evidence.

In response to the director’s request for evidence, the petitioner submitted copies of the beneficiary’s license as a boiler and pressure vessel inspector in Idaho and Washington in 2001 and 2002, as well as an experience letter that conforms to the requirements at 8 C.F.R. § 204.5(l)(3)². Additionally, the petitioner resubmitted a copy of the

² (ii) *Other documentation*—

(A) *General*. Any requirements of training or experience for skilled workers,

beneficiary's diploma from Singapore Politechnic and counsel did not provide any responsive arguments to the director's issue about combined credentials.

The director denied the petition on December 15, 2003, finding that the petitioner specifically required a 4-year baccalaureate degree on the ETA 750A but the evidence submitted by the petitioner reflected that the beneficiary only completed a 3-year baccalaureate degree program and thus was not qualified for the proffered position.

On appeal, counsel asserts that the beneficiary's credentials are sufficient to meet the requirements of the labor certification because the petitioner submitted a credential evaluation that states that the beneficiary's credentials are the equivalent of a U.S. bachelor's degree. Counsel asserts the following, in pertinent part:

In the United States, a baccalaureate degree is commonly earned in four years. In many foreign countries, the baccalaureate degree is earned in three. [The petitioner selected four years of college as the minimum qualification simply because a U.S. baccalaureate degree commonly – but not exclusively – requires four years of undergraduate study. The fact that [the beneficiary] earned the equivalent of a U.S. baccalaureate degree with less than four years of college does not make him unqualified. The evaluation submitted states plainly that the combination of [the beneficiary's] education and professional experience give him the equivalent of a U.S. baccalaureate degree – the equivalent of a four[-]year, undergraduate degree – in Marine Engineering.

Counsel asserts that the relevant regulations require only the minimum educational requirements on the ETA 750A which the beneficiary meets based on the credential evaluation.

In subsequent appending filings, counsel submits a new credential evaluation from The Trustforte Corporation (Trustforte evaluation), which stated that both the beneficiary's three-year program at Singapore Polytechnic and a one-year advanced diploma program at Singapore Polytechnic³, separately and jointly were equivalent to a U.S. bachelor's degree program; as well as a letter from [redacted] Director, Business and

professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* 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.

³ The record of proceeding does not contain a copy of any official documentation, such as a diploma, certification, or transcripts evidencing the beneficiary's attendance and/or completion of a one-year advanced diploma program at Singapore Polytechnic.

Trade Services of Citizenship and Immigration Services (CIS) finding that in the context of employment-based second preference immigrant visa petitions, for members of the professions holding advanced degrees, that the requirement of a "foreign equivalent degree," as defined by 8 C.F.R. § 204.5(k)(2) could be satisfied by a "proper credential evaluations service" finding that the "foreign degree or degrees are the equivalent of a . . . US degree."

At the outset, the new credential evaluation submitted on appeal will not be considered. The regulations affirmatively require a petitioner to establish eligibility for the benefit it is seeking at the time the petition is filed. See 8 C.F.R. § 103.2(b)(12). The purpose of the request for evidence is to elicit further information that clarifies whether eligibility for the benefit sought has been established. 8 C.F.R. § 103.2(b)(8).

The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner submits a new credential evaluation on appeal without explaining the unavailability of the credential evaluation in response to the director's request for evidence. The AAO will not consider this evidence for any purpose. *Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The AAO concurs with the director's findings. 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.

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 in Marine Engineering (four years in college) in engineering or an equivalent field.

Guiding the actual credentials held by the beneficiary are credential evaluations submitted into the record of proceeding for this case. Contrary to counsel's appellate assertions, the Globe credential evaluation unequivocally found equivalency based upon a combination of the beneficiary's completion of three years of education and his associate membership in Singapore's Institute of Marine Engineers. The Globe credential evaluation did not determine the beneficiary's three years of studies culminating in a diploma in marine engineering from Singapore Politechnic to be the equivalent of a four-year baccalaureate degree program in the United States but instead to be only three years of undergraduate studies.

Even if the Trustforte evaluation were not excluded from consideration by the application of *Soriano*, it is not probative evidence because the evaluation finds that both the three-year diploma from Singapore Politechnic and the following one-year of advanced studies from Singapore Politechnic in combination with the three-year diploma from Singapore Politechnic, both individually and jointly, establish the beneficiary's equivalency to a four-year U.S. baccalaureate degree program. It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides: "[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight." The Trustforte evaluation is unreliable since it makes the same conclusion based on two distinct sets of facts and the record of proceeding does not contain any evidence that the beneficiary attended and/or completed a one-year advanced studies program at Singapore Politechnic⁴.

Additionally, neither Globe nor Trustforte are members of the National Association of Credential Evaluation Services (NACES), which, according to NACES' website at <http://www.naces.org/aboutnaces.htm>, is:

an association of private foreign educational credential evaluation services committed to formulating and maintaining ethical standards in the field of foreign educational evaluation. Within the United States, no government agency monitors the establishment of foreign credential evaluation services. NACES® was founded in 1987 by credential evaluation services dedicated to promoting excellence and committed to setting the standards for the profession.

Additionally, the beneficiary indicated that he attended a three-year program. A review of the Singapore's government educational system at http://www.moe.gov.sg/corporate/edu_info_booklet/pdf/English.pdf indicates that polytechnic schools are deemed "pre-university" level institutions and successful completion of such programs can assist a student enter one of the three universities in Singapore: the National University of Singapore, Nanyang Technological University, or Singapore Management University.

The petitioner has not established that the beneficiary is qualified for the proffered position. In this case, the labor certification clearly indicates that the bachelor's degree must be four-year single 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. Despite counsel's appellate assertions concerning the timeframe for completion of bachelor degree programs, precedent has established that 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.

⁴ If the record of proceeding contained evidence that the beneficiary completed a one-year advanced studies program based upon the completion of the three-year program, culminating in a degree deemed equivalent to a four-year baccalaureate degree, then the AAO may determine that it is a single degree that represents the qualifying four years of education.

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(l)(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. The copy of the letter from Mr. Hernandez submitted on appeal is distinguishable from the instant petition since it was issued in the context of a different visa category and interpreted a regulatory provision inapplicable to third preference employment-based immigrant visa petitions⁵.

If supported by a proper credentials evaluation, a four-year baccalaureate degree from Singapore 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. Additionally, the petitioner has not indicated that a combination of educational accomplishments, or professional memberships, can be accepted as meeting the minimum educational requirements stated on the labor certification. Thus, the combination of educational accomplishments or professional memberships may not be accepted in lieu of a single four-year educational program resulting in a bachelor's degree deemed equivalent to a U.S. baccalaureate degree program. The beneficiary was required to have a bachelor's 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.

⁵ Furthermore, letters and correspondence issued by the Office of Adjudications are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although the letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).