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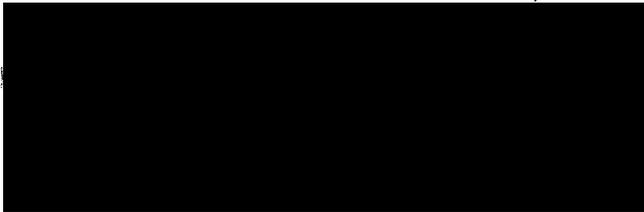
Date: MAR 03 2005

IN RE: 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 on appeal. The appeal will be dismissed.

The petitioner is an insurance company. It seeks to employ the beneficiary permanently in the United States as a data center administrator. 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(1)(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(1)(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(1), 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 August 10, 2002. The Form ETA 750 states that the proffered position requires a “Bachelor’s Degree (or equiv.)” in “MIS/Computer Science,” two years of experience in the proffered position, and two years of experience in a related position.

With the petition, counsel submitted the beneficiary’s transcripts from Memorial University in St. John’s Newfoundland. Those transcripts show that the beneficiary earned a diploma in vocational education. A

diploma, awarded May 25, 1996 and submitted with those transcripts, confirms that the beneficiary completed the requirements of the vocational education diploma program.

Counsel submitted the beneficiary's transcript from Keyin College in Halifax, Nova Scotia. Although that transcript shows that the beneficiary received 22 credits of instruction it does not indicate that the beneficiary received a bachelor's degree from that institution. A diploma submitted with that transcript shows that the beneficiary was awarded an AS/400 System Administrator/Analyst Diploma.

Counsel also submitted an evaluation of the beneficiary's education and experience, dated July 10, 2001, from an educational evaluator. That evaluation considers the petitioner's education and experience, and states that, together, they are the equivalent of a bachelor's degree in Management Information Systems from an accredited institution of higher education in the United States.

On July 18, 2003 the Director, Nebraska Service Center, requested additional evidence in this case. The director noted that the Form ETA 750 states that the proffered position requires a bachelor's degree in MIS or computer science or the equivalent, but does not define the meaning of equivalent in this context. The director noted that in this circumstance CIS interprets "or equivalent" to mean "or an equivalent foreign degree." The director noted that, although the evidence demonstrates that the beneficiary holds a foreign degree that is equivalent to a U.S. degree in vocational education, the record does not indicate that the beneficiary holds a U.S. degree in MIS or computer science or an equivalent foreign degree.

In response, counsel submitted a letter dated August 19, 2003. In that letter counsel observed that the educational evaluator had found the petitioner's education and experience to be the equivalent of a U.S. bachelor's degree in MIS. Counsel argued that the beneficiary, therefore, meets the requirements of the proffered position as stated on the Form ETA 750. In support of that position, counsel submits letters, dated December 27, 2002, January 7, 2003, and July 23, 2003, from the Director, Business and Trade Services, of the INS, which is now the CIS.

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, on September 18, 2003, denied the petition.

On appeal, counsel again asserts that the beneficiary's education and experience, taken together, satisfy the job requirements stated on the Form ETA 750, citing the letters from the Director, Business and Trade Services, copies of which counsel provided.

The first two of those letters state that the language of 8 C.F.R. § 204.5(k)(2), "a foreign equivalent degree," is not meant to preclude a beneficiary with several degrees. Those two letters make clear, therefore, that they pertain to a petition under a visa category other than that in the instant case.

The third letter states, *inter alia*, that a three-year foreign bachelor's degree may be combined with additional education to form the equivalent of a four-year U.S. bachelor's degree. That letter is accompanied by a letter, dated December 27, 2002, to which the Director, Business and Trade Services was replying. That letter makes clear that it is asking the question in the context of an alien with an advanced degree petitioning for a

visa pursuant to 8 C.F.R. § 204.5(k), rather than a beneficiary similarly situated to the beneficiary in the instant case.

That nonimmigrant classification to which 8 C.F.R. § 204.5(k) pertains requires an advanced degree, in addition to a bachelor's degree, or exceptional ability in the salient field. One issue presented to the director in those letters was whether possession of two advanced degrees, rather than one, would preclude satisfying the degree requirement. The director found that possession of two degrees, rather than one, did not bar satisfaction of the degree requirement. The other issue was whether salient employment experience could be substituted for the advanced degree. Given that the regulation itself provides for that substitution in that particular visa category, the director found that substitution to be permissible. Neither of those findings has any relevance to the instant case.

The laws and regulations pertinent to the visa category in the instant case do not sanction the same substitution of experience for a degree and do not permit the substitution of two degrees to form the equivalent of a bachelor's degree in a relevant field. The petitioner is obliged to show, not that the beneficiary's degree plus additional education and employment experience are the equivalent of a U.S. bachelor's degree, but that the petitioner has either a U.S. bachelor's degree or a foreign degree that is the equivalent of a U.S. bachelor's degree.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), set out above, uses the singular, "a foreign equivalent degree," to describe education that may be substituted for a U.S. bachelor's degree. The plain meaning of the regulatory language requires that the beneficiary have a single degree that is determined to be the foreign equivalent of a U.S. bachelor's degree in order to qualify for the instant visa category.

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(l), 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.