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FILE: WAC 02 066 54056 Office: CALIFORNIA SERVICE CENTER Date:

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 service center director denied the employment-based visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a software development and consulting company. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary, based on his undergraduate degree, was qualified to perform the duties of the position.

On appeal, counsel states that the beneficiary's degree in economics is related to the degrees identified on the Form ETA750. Counsel submits no further evidence.

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.

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.

In addition, 8 C.F.R. §204.5(l)(3)(ii)(C) states:

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. Evident 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 occupation

In the petition, the petitioner requested that the beneficiary be substituted on the original Form ETA 750 for [REDACTED] the original beneficiary. The Form ETA-750 stated that a college degree or equivalent was required for the position and listed the required major fields of study as "Comp Sci/Sci/Engg/Elect/related." The position also required two years of experience. The petitioner must demonstrate that the beneficiary is qualified to perform the duties of the position beginning on 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. *See* 8 C.F.R. § 204.5(d). Here, the Form ETA 750 was accepted for processing on March 29, 2001. The proffered wage as stated on the Form ETA 750 is \$81,100 a year.

On the petition, the petitioner claimed to have been established in 1996, to have 19 employees, and to have a net annual income of \$300,000 in the year 2000. In support of the petition, the petitioner submitted an evaluation report from the Foundation for International Services, Inc., (FIS) Bothell, Washington, and a certificate and

diploma from the University of Economy in Bratislava, Faculty of National Economy. These two latter documents indicated that the beneficiary had graduated from the university with a specialization in financial and monetary systems, and was awarded the academic title of engineer. The petitioner also submitted certificates of the beneficiary's training and work experience.

Because the director deemed the evidence submitted insufficient to demonstrate the petitioner's continuing ability to pay the proffered wage beginning on the priority date, on March 14, 2002, the director requested additional evidence pertinent to that ability. The director specifically requested that the petitioner provide copies of 2001 annual reports, federal tax returns, or audited financial statements to demonstrate its continuing ability to pay the proffered wage. The director also stated that the record indicated that the beneficiary was presently working for the beneficiary, and requested the beneficiary's W-2 Forms. On September 13, 2002, the director sent another request for further evidence, asking for evidence that the beneficiary possessed the education/training listed on the Form ETA 750. The director noted the petitioner's identification of its requirement for a bachelor degree or equivalent in a major field of study in "Comp Sci/Sci/Engg/Elect/related."

On December 2002, counsel submitted the beneficiary's high school and university transcripts with English translations. The petitioner stated that the petitioner's minimum requirement for the programmer/analyst position within its organization was a bachelor degree or equivalent in computer science, engineering, electronics, and/or related. The petitioner then stated that it considered the beneficiary's educational degree in economics to be related to the position. The petitioner asserted that there were many types of degrees related to the position, and therefore the petitioner listed "related" in the Form ETA750. Counsel further asserted that it was not necessary for the petitioner to prove that an economics degree was related to a programmer/analyst in general, and that the fact it hired the beneficiary prior to filing the labor certification established that the petitioner would include economics under the "related" baccalaureate degree.

Counsel also noted the Department of Labor (DOL) categorization of the proffered job as a computer software engineer and referred to the DOL *Occupational Outlook Handbook (Handbook)* to examine how the beneficiary's studies in economics and the nature of the job of computer software engineer coincided. The *Handbook*, according to counsel, stated that the computer software engineers apply the principles and techniques of computer science, science, engineering, and mathematical analysis to the design of computer software and systems. Mathematical analysis and econometrics are strongly related to computer sciences and based on computer-aided modeling. Linear programming is a combination of economics, math, and computer science. Counsel also asserted that the courses taken by the beneficiary in his degree program are highly related to the position. Counsel listed such courses as introduction to informatics, introduction to automation, logical systems, automatic control theory, microprocessor technology, business automation, operating systems, and programming. Finally counsel stated that since the beneficiary may be developing applications that require an economics background, an economics degree is related to the present position. Counsel submitted the *Handbook's* excerpt on computer software engineers.

According to the materials submitted by the petitioner with regard to the beneficiary's academic credentials, the beneficiary's studies indicated that from 1991-1992, his first two years of studies were in a department of electrical engineering, with a specialization in automatic control systems. In addition, the final two years, the beneficiary studied economics at the University of Economy in Bratislava, Slovak Republic, and his diploma

thesis is "Options of the Use of Information Technology at Processing the Records of Fixed Assets and Depreciation."

In his denial of the petition, the director noted that the educational equivalence report also examined the beneficiary's work experience in combination with his academic credentials in coming to its additional conclusion that the beneficiary had the equivalent of a U.S. bachelor's degree in management information systems. The director referred to the equivalency rule of three years of relevant work being the equivalent of one year of relevant university studies and stated that the examination of the equivalency of experience to the required baccalaureate degree is not applicable to employment-based immigrant petitions. Furthermore the director stated that the beneficiary had not established that the beneficiary met the minimum requirement of education in the major field of study as listed on the Form ETA 750. Thus, the director determined that the beneficiary was not qualified for the position.

On appeal, counsel states that the petitioner did not utilize the three to one rule in its petition, but rather relied on the fact that the beneficiary's economics degree is related to the occupations listed on the Form ETA 750. Counsel submits no further documentation.

With regard to the director's comment on the use of the three to one rule, while the director is correct in pointing out that such equivalency is not applicable to employment-based petitions, the AAO acknowledges that the petitioner did not bring up such an assertion in the original petition, or in its response to the director's request for further evidence. The educational equivalency document in fact contained two analyses of the beneficiary's academic credentials, one based on his university studies and the other based on his university studies and work experience. For purposes of this proceeding, only the evaluation of the beneficiary's academic studies as being equivalent to a degree in economics is relevant and given any weight.

Counsel's use of the *Handbook* to establish that a degree in economics is related to the profession of computer software engineers is not persuasive. The *Handbook* clearly states on in its description of training, other qualifications and advancement, "Most employers prefer to hire persons who have at least a bachelor's degree and broad knowledge and experience with computer systems and technologies. Usual degree concentrations for applications software engineers are computer science or software engineering; for systems software engineers, usual concentrations are computer science or computer information systems." Thus, the *Handbook* establishes that the usual degree for a computer software engineer is a degree in computer systems. Although the nature of computer systems software engineering or analysis require mathematics or logical thinking, this fact would not necessarily make an economics degree into a related occupation for the position.

Nevertheless, when reviewing the beneficiary's academic transcripts, it is noted that his first two years of studies (1991 and 1992) were not in economics, but rather in electrical engineering at the Slovak Technical University, with a specialization in automatic control systems. The beneficiary then undertook classes in the mid 90's at the Faculty of Business Informatics, in such areas as business automation, introduction to econometrics, and programming. His final diploma thesis, a requirement for his university degree in economics, is identified as the "Options for the Use of Information Technology at Processing the Records of Fixed Assets and Depreciation." Thus, while beneficiary obtained his baccalaureate degree in economics, his coursework and thesis indicate relevant academic work in areas directly related to electrical engineering, computer programming and analysis, and econometrics. Although the original beneficiary's degree in electrical engineering is directly identified in the ETA 750 in the broad range of degrees listed, the current beneficiary's combined academic coursework in electrical engineering, computer programming, as well as economics is sufficiently related to the degrees listed

on the Form ETA 750 to find him qualified to perform the duties of the position. In addition, the petitioner submitted sufficient evidence to establish that the beneficiary has the required two years of work experience.

Thus, the petitioner has established that the beneficiary is qualified to perform the duties of the position

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 met that burden with regard to the beneficiary's qualifications and the petitioner's ability to pay the proffered wage. Therefore the director's decision will be withdrawn and the appeal will be sustained. The petition will be approved.

ORDER: The appeal is sustained. The petition is approved.