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U.S. Citizenship
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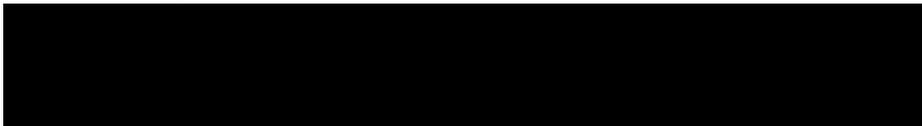
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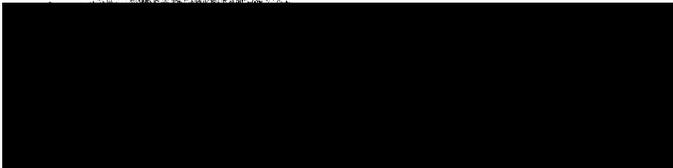
FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date:
SRC 02 268 51054

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

The petitioner is an information technology/system integration firm. It seeks to employ the beneficiary permanently in the United States as a system integration 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 brief.

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 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 January 22, 2001. The Form ETA 750 states that the proffered position requires a bachelor's degree in computer science, computer information systems, or management administrative science, and three years of experience in the proffered position or a related occupation.

With the petition, counsel submitted a letter, dated October 28, 1998, from a credential evaluation service. That letter states that the beneficiary has (1) a three-year bachelor of commerce degree from Andhra University in India which is equivalent to an associates degree in business administration from a U.S.

institution, (2) a certificate in information and systems management from Aptech Computer Education which is equivalent to four semesters of computer information systems and database management from a U.S. institution, and (3) a certificate from Software Solution Integrated Limited in India which is equivalent to a 3-month course in computer database management from a U.S. institution. That letter also states that the beneficiary's education is the equivalent of a Bachelor of Science degree in computer information systems.

Counsel also submitted copies of the beneficiary's diploma and certificates.

On April 1, 2003 the Texas Service Center requested additional evidence in this matter. None of the requested evidence, however, is pertinent to the basis of the decision of denial.

The Director, Texas Service Center, subsequently determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree. On July 15, 2003, the director denied the petition.

On appeal, counsel asserts that the petition is approvable because the evaluation considered only the beneficiary's education, and not his employment history, in finding that he has the equivalent of a bachelor's degree in computer information systems.

To determine whether a beneficiary is eligible for a third preference visa, the Service must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. 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 Form ETA 750 clearly states that the proffered position requires a bachelor's degree. An aggregation of lesser degrees that an evaluation finds to be equivalent is unacceptable.

Counsel also submits copies of two letters dated January 7, 2003 and July 23, 2003, respectively, from [REDACTED] III of the INS Office of Adjudications to counsel in other cases, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. 204.5(k)(2). Within the July 2003 letter, Mr. [REDACTED] states that he believes that the combination of a post-graduate diploma and a three-year baccalaureate degree may be considered to be the equivalent of a U.S. bachelor's degree.

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); see also, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in Mr. [REDACTED] correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute 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. We do not find the determination of the credentials evaluation probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (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 because the degree did not require four years of study. *Matter of Shah*, at 245.

This analysis would not be affected by the election to treat the instant petition as a petition for a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act, rather than as a professional pursuant to section 203(b)(3)(A)(ii) of the Act. In either event, the petitioner is obliged to show that the beneficiary possesses the requisite qualifications as stated on the Form ETA 750 which, in this case, calls for a bachelor's degree.

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.