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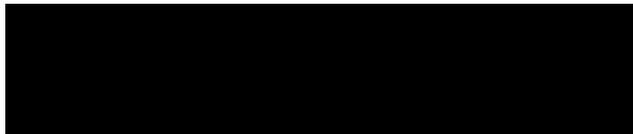
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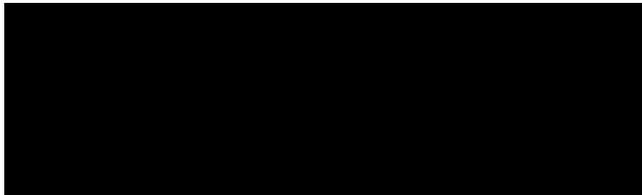
Date: MAY 13 2005

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 a software developer and computer service provider. 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 accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the Form ETA 750 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. Whether it is for a professional or a skilled worker the petitioner must demonstrate that, as of the priority date, the beneficiary was qualified for the proffered position pursuant to the terms of the Form ETA 750. Here, the Form ETA 750 was accepted for processing on March 18, 2002. The Form ETA 750 states that the proffered position requires four years of college leading to a bachelor’s degree or an equivalent degree and one year of experience as a programmer or consultant.

With the petition, counsel submitted a diploma, dated September 15, 1995 from Osmania University, in India, showing that the beneficiary graduated with a Bachelor of Arts degree in political science, public administration, and sociology.

Counsel submitted an evaluation from an educational evaluation service. That evaluation, dated November 12, 1998, states that the beneficiary's studies at Osmania University are the equivalent of three years of study at an accredited college or university in the United States.

Counsel submitted statements of marks from Annamalai University indicating that the beneficiary studied there from 1995 to 1997. Counsel submitted a diploma from that institution that indicates that the beneficiary received a master's degree in sociology in May 1997.

Counsel also submitted mark sheets and a certification from the Madras Board of Examinations of the Department of Technical Education, in Tamil Nadu, India. Those documents show that the beneficiary studied computer science and engineering at that institution during 1992 and 1993.¹ The evaluation states that the petitioner's studies with the Madras Board of Examinations are equivalent to one year of study toward attainment of a bachelor's degree in computer science from an accredited United States institution. The evaluation further states that the beneficiary's studies, taken together, are the equivalent of a bachelor's degree in computer science from an accredited United States institution.

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 December 10, 2003, denied the petition.

On appeal, counsel submits another evaluation from the same educational evaluator. This second evaluation, dated January 5, 2004, states that the beneficiary's education at the three institutions he attended is the equivalent of a bachelor of science degree with a dual major in sociology and computer science and a master of arts degree in sociology.

Counsel asserts that the phrase "Bachelor or equivalent," entered in the field on the Form ETA 750 marked "college degree required," and "Computer Science" in the filed marked "Major Field of Study," does not mean that the proffered position requires a bachelor's degree in computer science or an equivalent foreign degree, but rather that the position requires a bachelor's degree or education that is equivalent to a bachelor's degree in computer science.

In support of that assertion counsel cites a letter, July 23, 2003, from the Director, Business and Trade Services, of the INS, which is now the CIS. That 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 states 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. That letter makes clear, therefore, that it pertains to a petition under a visa category other than that in the instant case.

¹ The December 1993 mark sheet indicates that the beneficiary did not pass that semester.

That nonimmigrant classification requires an advanced degree, in addition to a bachelor's degree, or exceptional ability in the salient field. One issue presented to the director 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 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 laws and regulations pertinent to the visa category in the instant case sanction no substitution for that 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.

This analysis would not be affected by whether the petition is treated as a petition for a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act or as a petition for a professional pursuant to section 203(b)(3)(A)(ii) of the Act. In either event, the petitioner has failed to demonstrate that the beneficiary has the qualifications required by the approved Form ETA 750 and the Form I-140 petition may not be approved.

Counsel argues, however, that enforcing the regulations as written constitutes a change in policy, and that such a change in policy without notice violates due process. This office notes that the regulations in question were promulgated in accordance with the Administrative Procedures Act and that the policies and procedures set forth in these regulations have, therefore, been subject to notice and comment. Counsel offers no evidence for the proposition that CIS has made regulatory or policy changes without notice. Treating the matter as first impression, this office finds that, even if enforcing the regulations as written represents a change in policy, no notice was required.

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.