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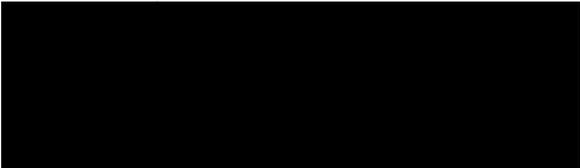


FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAY 18 2005
WAC 03 114 52545

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 preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a product safety certification organization. It seeks to employ the beneficiary permanently in the United States as a staff 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 certified Form ETA 750 accompanying the immigrant petition by which the petitioner applied and denied the petition accordingly.

On appeal, the 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.

The regulation at 8 C.F.R. § 204.5(l)(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(l)(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(l), 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 13, 2001.

The certified Form ETA 750 stated that the proffered position required a four-year college degree with three years experience. The requirements for “Staff Engineer” are stated in Item 14 of the Application for Alien Employment Certification:¹

¹ Related occupations also indicated on the Alien Employment Certification are “Mechanical or Electric Engineer.”

- In category "Education" "(Enter number of years)" under "College" "4."²
- Under "College Degree Required (specify)" category "*Bachelor's [degree] or equivalency.*"
- Under Major Field of Study "*Electrical/Mech Engg.or Industrial Tech.*"
- In category "Experience: Job Offered. YRS." "3."

With the petition, counsel submitted the original Alien Employment Certification, the petitioner's letter of support for beneficiary, copies of petitioner's financial information and related information, as well as the beneficiary's qualification documentation.

Because the evidence submitted was insufficient to demonstrate that the beneficiary had a baccalaureate degree, the California Service Center, on April 17, 2003 and July 28, 2003, requested additional evidence pertinent to the beneficiary's education. The Service Center specifically requested the following information on April 17, 2003:

"Education & Training: Submit evidence to establish that the beneficiary possess the education/train listed on the Form ETA 750 (Application for Alien Employment Certification). Evidence of education/training should be submitted on the institution's official letterhead or stationery indicating the courses taken and the credits received, and any conferences of certificates or degrees. A *baccalaureate degree is required*, submit a copy of the baccalaureate degree and the official college or university transcript."

In response, the counsel by letter dated July 10, 2003, stated:

"Our Response:

Pursuant to your instructions, enclosed please find an educational evaluation report with supporting education documents such as academic transcript and certificates evidencing Mr. Weaver holds educational qualifications deemed equivalent to a U. S. baccalaureate degree."

The documents and an educational evaluation report submitted by counsel recounted the employment experience and professional training of the beneficiary. An excerpt from the "Professional Evaluation" included in the response prepared by Cetin Kaya Koc, Professor of Electrical and Computer Engineering, Oregon State University dated July 7, 2003 for the beneficiary states:

"The following is an analysis and advisory evaluation of the *employment experience and professional training of Mr. David Stanley Weaver*. As discussed below, Mr. Weaver has completed no less than eighteen years and eight months of progressively responsible qualifying work experience and professional training in telecommunications engineering, electrical engineering and related areas, characterized by increasingly advanced responsibility and complexity under the supervision of managers, and together with peers, at a bachelor's level of practical experience." [Emphasis added]

² Petitioner's occupation requirements are in italics.

CIS will use 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. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988

In a second Request for Evidence dated July 28, 2003, the Service Center requested the following information:

“Education: Submit evidence to establish that the beneficiary possesses the education listed on the Form ETA 750...Evidence of education should be submitted on the institution’s official letterhead or stationery indicating the courses taken and the credits received, and any conference of certificates or degrees. If a baccalaureate degree is required, submit a copy of the official college or university transcript. Also please submit a legible copy of the diploma received.”

“... Note: Part 14 of the ETA-750 states that the Major Field of study is “Electrical/Mech. Engineering, or Industrial Tech” for the position of Staff Engineer. Review of the I-140 reveals that the beneficiary has not submitted documentation to establish the college degree or education or related occupation required establishing eligibility for the position. Please provide clarification of major field of study or related occupation.”

In response, the counsel by letter dated October 17, 2003, stated in part:

“Our Response:

Pursuant to your instructions, we are enclosing original educational documents to establish Mr. Weaver’s eligibility for the position of Staff Engineer. Specifically we have enclosed the following documents:

- Technician Education Council Certificate in Electrical Engineering ...
- Apprenticeship Agreement ...
- Academic Course and Training Programme

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 January 27, 2004, denied the petition.

On appeal, the petitioner/counsel asserts that, “ CIS [i.e. Citizenship and Immigration Services] misapplied the law and regulation in denying the petition based on the beneficiary’s lack of a bachelor’s degree when the petitioner documented his [beneficiary’s] equivalent combination of education and experience in the I-140 [immigrant petition].”

Along with the Form I-290B, counsel submits a brief, a copy of Form ETA 750, a copy of an excerpt from CIS and American Immigration Lawyers Association liaison minutes, and, a copy of a credential evaluation report.

Petitioner's counsel makes the assertion that "... Clearly, the Petitioner intended the additional words "or equivalence" to signify to applicants for the position [of Staff Engineer] that it would accept not only bachelor's degreed candidates, but also those with other backgrounds which would provide them with the functional equivalent of the bachelor's degree"

Despite counsel's assertion, the CIS will not accept a degree equivalency when a labor certification plainly and expressly requires a specific degree. To determine whether a beneficiary is eligible for a third preference immigrant visa, the Service must ascertain whether the alien is in fact qualified for the certified job. In evaluating the beneficiary's qualifications, the Service must look to the job offer portion of the labor certification to determine the required qualifications for the position. The Service 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 Madany v. Smith, 696 F.2d 1008 (D.C. Cir. 1983); K.R.K. Irvine, Inc. v. Landon, 699 F2d 1006 (9th Cir. Cal. 1983); Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey, 661 F2d 1 (1st Cir. 1981).

Neither in the above referenced evaluation report or in the attached documents pertaining to the beneficiary's education, training and experience is there evidence that beneficiary received a four-year college bachelor's degree in Electrical/Mechanical Engineering or Industrial Technology as required by petitioner's Alien Employment Certification.

Petitioner's counsel makes the assertion that "...The California Service Center has in the past supported Petitioner's Interpretation [that the job requirements on the Alien Employment Certification may qualify for a lesser EB-3 Classification as a skilled worker]...." Neither the law nor the regulations require the Director to consider lesser classifications if the petitioner does not establish the beneficiary's eligibility for the lesser classification requested. Petitioner's clear intent expressed in the Alien Labor Certification. A four-year college degree is required in an Electrical/Mechanical, Engineering, or Industrial Technology. field.

Counsel assertions are not persuasive. The petitioner's has stated minimum education, training and experience requirements for the occupation of Staff Engineer on the certified Form ETA 750. It is these minimum requirements that guided the Director in his decision.

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.