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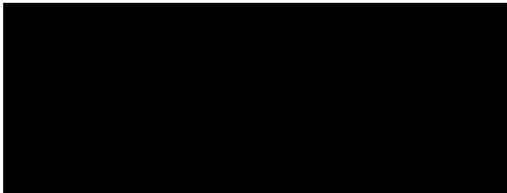
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: NOV 22 2005
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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

The petitioner is a computer consulting and software development firm. 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 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 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(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 November 5, 2001. The Form ETA 750 states that the proffered position requires four years of college culminating in a “Bachelor’s [degree] or equivalent” and, in addition, one year of experience in the job offered.

The petitioner filed a previous petition for the instant beneficiary on December 27, 2002.¹ With that petition, counsel submitted (1) a secondary school certificate showing that the beneficiary was born on April 12, 1971 and passed the examination to graduate from secondary school during April of 1986, (2) a provisional certificate from the Andra Pradesh, India State Board of Technical Education and Training stating that the petitioner received a three-year diploma in Electronics and Communication Engineering and became eligible to receive that diploma on February 28, 1990, (3) transcripts from that institution showing the classes the beneficiary attended and the marks he obtained, (4) test results pertinent to sections A and B of the Examination in the Electronics and Communication Engineering Branch of the Institution of Engineers in Calcutta, India, (5) a certificate dated August 28, 1996, from that institution stating that that the beneficiary had passed sections A and B of the Institution Examinations in the Electronics and Communication Engineering Branch, (6) a memorandum, date August 16, 1978, from the Ministry of Education & Social Welfare in India, stating that the Government of India recognizes passage of sections A and B of the Institution of Engineers examination as the equivalent of a bachelor's degree in the appropriate field of Engineering, a certificate stating that the beneficiary was elected as an Associate in the Institution of Engineers on May 27, 1996, (7) documents pertinent to the beneficiary's qualifications as a Sun Certified Programmer and in Java and completion of a course in Java, and (8) documents pertinent to the beneficiary's professional employment.

Counsel also submitted a report, dated August 19, 1998, from a credential evaluation service. That report states that the petitioner's 1990 diploma in electronics and communication engineering from the State Board of Technical Education and Training in Andra Pradesh, India is the equivalent of a U.S high school graduation and associates degree. That report further states that the Associate Membership Certificate from the Institution of Engineers in India was attained through the beneficiary's previous education and professional experience and an examination, and that it is the equivalent of a U.S. bachelor's degree.

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 May 22, 2003, denied the petition. The director noted that the petitioner's certificate from and associate membership in the Institution of Engineers was attained, in part, based on the beneficiary's previous professional experience. This office further notes that it does not appear to require four years of college studies.

Subsequently, the petitioner submitted the instant petition. With the petition counsel submitted a new credential evaluation, dated May 2003. The new evaluation also states that the beneficiary's associate membership in the Institution of Engineers is based, in part, on his advanced standing in his profession.

On May 27, 2004 the Director, Nebraska Service Center, denied the instant petition, noting that the evidence does not demonstrate that the beneficiary has the requisite bachelor's degree or foreign equivalent degree.

On appeal counsel submits photocopies of much of the previously submitted evidence. In a brief, counsel notes that the approved Form ETA 750 labor certification requires that the beneficiary have four years of college culminating in a bachelor's degree in computer science, management information systems, or engineering or equivalent. Counsel correctly asserts that, because the beneficiary does not have a bachelor's

¹ LIN 03 061 52938.

degree, the only salient issue in this case is the interpretation of the phrase "or equivalent" and whether the beneficiary has such an equivalent.

Counsel observes that, as stated in its memorandum, the Indian government recognizes passage of sections A and B of the Institution of Engineers examination as the equivalent of a bachelor's degree. Counsel provides a letter, dated July 7, 1997 from the Assistant Academic Registrar at Osmania University in Hyderabad, India stating that the university recognizes passage of those examinations as the equivalent, for their own purposes, of a bachelor's degree.

Counsel also submits two new credential evaluations, one dated December 2, 2003 and the other dated January 2, 2004. The first evaluation states that the beneficiary's passage of the A and B examinations of the Institution of Engineers is equivalent, in itself, to a bachelor's degree. The second evaluation states that the passage of those examinations and the beneficiary's education, taken together, are the equivalent of a bachelor's degree.

Counsel argues that the Nebraska Service Center is using unpublished non-precedent opinions to find that the word "equivalent" necessarily means a four-year degree. Counsel states that no other Service Centers are using that interpretation. This office notes, however, that the decision in this case does not appear to rely on any unpublished or non-precedent decisions.

In support of his position, counsel submits letters, dated January 7, 2003, and July 23, 2003, from the Director, Business and Trade Services, of the INS, which is now the CIS.

The first of those letters 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.

The second 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 meeting the requirements of 8 C.F.R. § 204.5(k)(2). This, again, makes clear that the director was addressing 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 other immigrant 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 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 of 8 C.F.R. § 204.5(k)(2). The other issue was whether salient employment experience could be substituted for the advanced degree. The regulation provides for that substitution in that particular visa category and the director found that substitution to be permissible. Neither of those findings is relevant 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.²

In the instant case, the first two evaluations submitted, dated August 19, 1998 and May 2003, make clear that the evaluators were considering the beneficiary's professional employment experience in stating that he has the equivalent of a bachelor's degree. One of the evaluations submitted on appeal states that it is considering the beneficiary's passage of those two examinations by itself in finding that the beneficiary has the equivalent of a bachelor's degree. The other states that the passage of those examinations and the beneficiary's education, taken together, are the equivalent of a bachelor's degree. None of the evaluations submitted demonstrate that the petitioner has a U.S. bachelor's degree or an equivalent foreign degree.

The Service 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).

The various submissions stating that the beneficiary's Associate Membership Certificate from the Institution of Engineers in India is the **equivalent** of a U.S. bachelor's degree do not demonstrate that it is, in fact, a bachelor's degree or a foreign equivalent degree.

This office further notes that the result in this case would be the same if the petition were considered to be for a skilled worker. The Form ETA 750 states that the proffered position requires four years of college **and** a bachelor's degree or equivalent. The record does not demonstrate that the beneficiary has four years of college and does not demonstrate that he has a U.S bachelor's degree or an equivalent foreign 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(1), 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.

² As was noted above, the applicable statute, 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. That statute makes no allowance for educational equivalence to a bachelor's degree. The pertinent regulation, 8 C.F.R. §204.5 (1)(ii)(C) states that, if the petition is for a professional, the petitioner must demonstrate that the beneficiary has "a United States baccalaureate degree or a foreign equivalent degree." That regulation also contains no provision for substitution of experience for all or part of a required degree.