



U.S. Citizenship
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[Redacted]

FILE: [Redacted]
EAC 03 230 51828

Office: VERMONT SERVICE CENTER

Date: OCT 07 2005

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:

[Redacted]

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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a law firm. It seeks to employ the beneficiary permanently in the United States as a paralegal. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he determined that the petitioner failed to establish that the beneficiary was eligible for the visa classification sought.

On appeal, counsel states that Citizenship and Immigration Services (CIS) erred in that the beneficiary had the equivalent of a foreign bachelor's degree. Counsel resubmits documentation as to the beneficiary's educational credentials.

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 Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of 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)(3)(ii)(C) states the following:

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. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

With regard to evidentiary guidance for skilled workers, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides:

If the petitioner is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification The minimum requirements for this classification are at least the two years of training or experience.

Regardless of whether the petitioner is seeking to classify the petition under 203(b)(3)(A)(i) or (ii) of the Act, to be eligible for approval, a beneficiary must also have the education and experience specified on the labor certification as of the petition's filing date. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). In this case, that date is February 16, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and

experience that an applicant must have for the position of paralegal. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	VV ¹
	High School	
	College	4
	College Degree Required	B.A.
	Major Field of Study	Liberal Art

The petitioner did not specify that any applicants have two years of experience in the job offered or two years of experience in any related occupation. Under Item 15, the petitioner also set forth additional special requirements as follows: "Paralegal Courses." The job offered lists the following duties on Item 13:

Researches and analyzes law sources to prepare legal documents used by the attorney. Investigates facts and law of case to determine causes of action and to prepare case accordingly. Files pleadings with court clerk. Prepares affidavits of documents and maintains document files. Delivers or directs delivery of subpoenas to witnesses and parties to action. May direct and coordinate activities of law office employees, prepare office accounts and tax returns.

The beneficiary set forth her credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), she indicated that she attended St. Francois Girls College- Trinidad, studying general studies, from September 1982 to May 1988, and received a high school certificate or degree. The beneficiary also indicated she had attended a legal assistant program at Georgetown University, Washington D.C. from June 1998 to May 1999, and did not indicate what degree or certificate she received from this program. The beneficiary also listed two additional study programs taken at the University of D.C., (UDC) Washington, D.C. One UDC course was in commercial law and taken from June 1999 to August 1999, and the other UCD course was listed as paralegal classes taken from February 2000 to May 2000. The beneficiary did not indicate if she received a certificate or degree based on these studies. She provides no further information concerning her educational background on this form, which is signed by the beneficiary under a declaration under penalty of perjury that the information was true and correct.

On Part 15, eliciting information concerning the beneficiary's past employment experience, the beneficiary indicated that she worked for the petitioner as a paralegal trainee, from July 1997 to July 1999, Washington, D.C. The beneficiary also indicated that she was a student from July 5, 1999 to the time the original Form ETA 750 was signed on October 2, 2000. On appeal, counsel submits an additional Part 15. This document is dated July 30, 2001, and indicates that the beneficiary also worked for the petitioner as a paralegal from July 1999 to the date the document was signed, namely July 30, 2001.

With the initial petition, the petitioner provided copies of the beneficiary's Form W-2 Wage and Tax Statement for 2001 and 2002.

¹ This notation appears to be a typographical error.

Because the evidence was insufficient, the director requested additional evidence on October 21, 2003, specifically requesting proof that the beneficiary obtained the required U.S. or foreign B.S. degree as of February 16, 2001. The director requested that the petitioner submit an advisory evaluation of the beneficiary's formal education to determine the level and major field of educational attainment in terms of equivalent education in the United States. The director stated an acceptable evaluation should consider formal education only, not practical experience; state if the collegiate training was post-secondary; provide a detailed explanation of the materials evaluated; and briefly state the qualifications and experience of the evaluator.

In response counsel submitted a copy of credentials evaluation from the Foundation for International Services, Inc. (FIS) [REDACTED] evaluator, wrote the document which is dated June 15, 2000. The document concludes that the beneficiary has:

the equivalent of graduation from high school in the United States, almost one year of university-level credit from an accredited university in the United States and has, as a result of her educational background, training and employment experiences (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual [with] a bachelor's degree in liberal arts from an accredited college or university in the United States.

Among the educational documents listed in the educational equivalency report, but not contained in the record, are copies of two reports of grades from the University of the District of Columbia listing courses completed toward the A.A.S. degree the beneficiary completed in the summer of 1999 and spring of 2000. The FIS evaluator stated that these documents dated August 4, 1999 and May 18, 2000 indicated a completion of 27 semester credits (almost one year of university-level credit) from an accredited university in the United States. The FIS evaluator also listed copies of records from Georgetown University and from the University of the West Indies for non-credit course work in Child Psychology and Legal Assisting. The educational evaluation document also listed a resume and an unsigned copy of a letter from the petitioner that listed and verified the beneficiary employment. The employment experiences with the petitioner were listed as: receptionist from September 1988 to February 1989; accounting supervisor, computer operator and marketing liaison, May 1989 to May 1997, and training as a legal assistant from July 1997 to July 1999.

The director denied the petition on April 6, 2004, finding that the educational evaluation document stated that the beneficiary had the equivalent of a high school education, with almost one year of university-level credits from an accredited U.S. institution. The director further stated that although the advisory evaluation report evaluated the beneficiary's educational background, training, and many years of employment experience to be the equivalent of a bachelor degree in liberal arts from an accredited U.S. college or university, there were no provisions on the labor certification for the acceptance of less than a bachelor degree. The director concluded that the beneficiary's education was not the foreign equivalent of a bachelor's degree in the United States, and that, therefore, the petitioner had not established that the beneficiary is a professional.

On appeal, counsel asserts that the beneficiary's experience and education combined are the equivalent of a baccalaureate degree. Counsel further assert that the regulations do not state anywhere that the only way an alien may demonstrate having a U.S. bachelor's degree is through having an actual formal U.S. bachelor's degree. Counsel states that the U.S. bachelor's degree requirement can be satisfied when the beneficiary has a formal foreign bachelor's degree which is the equivalent of a U.S. degree; when the beneficiary has some foreign education and work experience which, when combined, are the equivalent of a U.S. bachelor's degree; or when the beneficiary has

work experience alone which is equivalent to a U.S. bachelor's degree. Counsel cites to *Hong Kong TV Video Program, Inc. v. Ilchert*, 685 F. Supp. 712(N.D. Cal. 1988).

Counsel also states that the beneficiary was already the recipient of an approved H-1B visa and had previously been found to have met the requirements for having the foreign equivalent of a U.S. bachelor's degree, and the requirement of being a professional. Counsel states that CIS violated the rule that an agency may not make simultaneously inconsistent decisions without providing some explanation for the inconsistency, and cites to *Hatch v. FERC*, 654 F. 2d 825, 834-35 (D.C.Cir. 1981), *Greater Boston Television Corp. v. FCC* 444 F.2d 841,852(D.C. Cir. 1970), and *Ohio Fast Freight, Inc. V. United States* , 574 F.2d 316,319 (6th Cir. 1978). Counsel also states that DOL certified the Form ETA750, and as a consequence, CIS is outside its authority in finding the beneficiary unqualified.

Upon review of the record, it is noted that many of the cases that counsel cites on page 6 of her brief pre-date the current statutory definition of third preference "professionals" updated in the Act's most recent amendment to specify "immigrants who hold baccalaureate degrees." In addition, it is also noted that the precedent decision *Hong Kong TV Video Program, Inc.* is inapplicable and irrelevant in the present proceedings as the facts of that decision involved H-1B non immigrant visas, not third preference immigrant visas. With regard to counsel's assertion that CIS is outside its authority in reviewing the beneficiary's qualifications, the DOL certification of the Form ETA 750 does supercede CIS' review and evaluation of the criteria the petitioner must prove in order to establish that the petitioner is approvable, and that includes a review of whether or not the beneficiary is qualified for the proffered position which, in this case, is governed by Section 203(b)3(A)(i) of the Act and 8 C.F.R. § 204.5(l)(3).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), guiding evidentiary requirements for "professionals," states the following:

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. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for "skilled workers," states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory provision. And for the

“professional category,” the beneficiary must also show evidence of a “United States baccalaureate degree or a foreign equivalent degree.” Thus, regardless of category sought, the petitioner must show that the beneficiary meets the requirements of the Form ETA 750A, which includes four years of college and a baccalaureate 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 petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 that, in this case, includes four years of college, a bachelor’s degree in liberal arts, and paralegal courses. The petitioner has established that the beneficiary has one year of university level coursework at an accredited U.S. university; however, the petitioner has not established that the beneficiary has a bachelor’s degree or its equivalent in liberal arts.

CIS uses 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). As stated previously, the evaluation document submitted by the petitioner clearly establishes that the beneficiary has less than one year of college level studies, and not the requisite four years of college outlined on the Form ETA 750.

In this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor’s degree must be an equivalent degree, not 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. A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. 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. *Id.* at 245. *Shah* applies regardless of whether or not the petition was filed as a skilled worker or professional.

The regulations define a third preference category “professional” as 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.” *See* 8 C.F.R. § 204.5(l)(2). The regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a “skilled worker,” the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor’s degree, or an equivalent degree. The petitioner simply cannot qualify the beneficiary as a skilled worker without proving the beneficiary meets its additional requirement on the Form ETA-750 of an equivalent degree to a U.S. bachelor’s degree.

If supported by a proper credentials evaluation, a four-year baccalaureate degree from Trinidad could reasonably be considered to be a “foreign equivalent degree” to a United States bachelor’s degree. Here, the record reflects that the beneficiary’s formal education consists of less than one year of university-level course credits at UDC. The evaluation submitted with the evidence in this proceeding suggests that the beneficiary’s one year of university level studies,

non-credit coursework in legal assisting, and her subsequent employment experience which included jobs such as receptionist, computer operator, and market liaison should be considered as the equivalent of a baccalaureate degree. This assessment is not accepted as competent and probative evidence that the beneficiary holds a foreign equivalent degree to a United State's bachelor's degree because it includes employment experience in the evaluation. Unlike the temporary non-immigrant H-1B visa category for which promulgated regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) permits equivalency evaluations that may include a combination of employment experience and education, no analogous regulatory provision exists for permanent immigrant third preference visa petitions.

Contrary to counsel's assertions, Item 14 of the Form ETA 750A does not expand the educational requirements to work experience that is equivalent to a bachelor's degree. The petitioner's responses to questions eliciting number of years of college, college degree required and major field of study in Item 14 can lead to no alternate conclusion.

On appeal, counsel asserts that the CIS service center previously approved the beneficiary for an H-1B visa, and that relevant case law states that agencies may not make simultaneously inconsistent decisions without providing some explanation for the inconsistency. It is noted that the record does not contain documentation on the beneficiary's previously approved H-1B visa petition. While the regulations at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5) do specify the types of documentation by which a petitioner can establish that a beneficiary's combined education and work experience is the equivalent of a baccalaureate degree from an accredited U.S. educational institution, the record does not reflect how the petitioner met these regulatory criteria in the adjudication of her previous nonimmigrant petition. Thus, the AAO cannot comment on whether the previously approved petition was correctly decided or approved in error.

It is also noted that the AAO's authority over a service center is similar to that of a court of appeals and a district court. Even if a service center director had previously approved an immigrant petition on behalf of the beneficiary in another visa classification, the AAO would not be bound to follow the contradictory decision of a service center. *Louisiana Philharmonic Orchestra v. INS*, 2000 WL 282785 (E.D. La.), *aff'd* 248 F.3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001). The Administrative Appeals Office is never bound by a decision of a service center or district director. See *Louisiana Philharmonic Orchestra vs. INS*, 44 F. Supp. 2d 800, 803 (E.D. La. 2000), *aff'd.*, 248 F. 3d 1139 (5th Cir. 2001), *cert. denied*, 122 S.Ct. 51 (2001).

The AAO concurs with the director's decision that the petitioner has not established that the beneficiary is qualified for the proffered position, under the third preference immigrant visa category, since it has not proven that the beneficiary has four years of college and a baccalaureate degree or foreign equivalent.

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.