



U.S. Citizenship
and Immigration
Services

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FILE: [REDACTED]
EAC 02 260 51700

Office: VERMONT SERVICE CENTER

Date: OCT 19 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 on appeal. The appeal will be dismissed.

The petitioner is an IT training, consulting, services and hardware reseller. It seeks to employ the beneficiary permanently in the United States as a technical support specialist. 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 Alien Employment Certification accompanying the petition specified¹ and denied the position accordingly.

On appeal, the 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 April 26 2001.

The issue to be discussed in this case is whether or not the petitioner had established that the beneficiary has the requisite education as stated on the labor certification. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification. *See Matter of Wing’s Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

¹ In the subject case, the petitioner “checked-off” on Form I-140, Part 2, “e”. that states “A skilled worker (requiring at least two years of specialized training or experience) or professional . . .”

In the instant case, Form ETA 750 A, item 14 describes the requirements of the proffered position and occupation of technical support specialist as follows:

14.	Education (enter number of years) A Heading	
	Grade School	<u>X</u>
	High School	<u>X</u>
	College	<u>4</u>
	College Degree Required	<u>Bachelors</u>
	Major Field of Study	Blank
	Training	Blank
	Experience	A Heading
	Job Offered	A Heading
	Number –Years Mos.	Blank & “OR”
	Related Occupation	A Heading ²
	Number –Years Mos.	<u>2</u>
	Related Occupation ...	A Heading
	Specify	Computer Hardware and Software Solutions

The employer who is the petitioner has prepared the above ETA 750 A as an essential part of the labor certification process used to support preference visa petition that are employment based. The employer who desires to employ an alien in the United States must undertake a multiple step process as directed by the United States Department of Labor which, once approved, certifies the Alien Employment Application for the occupation of technical support specialist based upon the above criteria. In the present case, the above requirements also state that the occupation of technical support specialist requires a four-year bachelor’s college degree with no field specified. In a related occupation to technical support specialist, specified as Computer Hardware and Software Solutions, the employer/petitioner requires two years experience.

Along with Form ETA 750, Part A, set forth above, the employer also is required to submit Form ETA 750, Part B that is a “Statement of Qualifications of Alien.” Part B identifies the alien, specifies his current and prospective address in the United States, his education including trade and vocation training, and lists his work experience.

The Form ETA 750 Part B prepared by the beneficiary states that the following education experience:

Block 11

Names and Addresses of Schools, Colleges, and Universities attended (including training or vocational training facilities)

Universite Paris Nord, Paris XIII, Paris, France

Field of Study

Law & Psychology

From ...[mo./yr]

10/1991

To ...[mo./yr.]

08/1992

Degrees or Certificates Received

Candidate for BA Law and Psychology

² There is a phrase in Block 13 of the form that states “In the alternative 2 years relevant experience.” It is not clear, as counsel asserts, that this relates to Block 14, as it was not included there.

University Paris 7 Jussieu, Paris France

Field of Study	<u>Law & Psychology</u>
From ...[mo./yr]	<u>09/1993</u>
To ...[mo./yr.]	<u>08/1994</u>
Degrees or Certificates Received	<u>Candidate for BA Law and Psychology</u>

Northeast Training Center, New Hampshire, USA

Field of Study	<u>Certified Novell Admin</u>
From ...[mo./yr]	<u>04/1995</u>
To ...[mo./yr.]	<u>05/1996</u>
Degrees or Certificates Received	<u>Certified Novell Administrator</u>

Northeast Pilot Training Center, New Hampshire, USA

Field of Study	<u>CNE</u>
From ...[mo./yr]	<u>06/1996</u>
To ...[mo./yr.]	<u>05/1997</u>
Degrees or Certificates Received	<u>Certified Novell Engineer</u>

Massachusetts Institute of Technology, Cambridge, MA USA

Field of Study	<u>MCP</u>
From ...[mo./yr]	<u>01/1999</u>
To ...[mo./yr.]	<u>02/1999</u>
Degrees or Certificates Received	<u>Microsoft Certified Professional</u>

On appeal, counsel states in pertinent part:

“Forms [sic] ETA was Certified with B.S. [i.e. bachelor of science degree] OR 2 years of experience.”

Throughout his brief, counsel asserts and attempts to explain the intent of the petitioner to, in essence, produce a petition with certified Alien Employment Application acceptable to Citizenship and immigration Services (CIS). The assertions of counsel do not constitute evidence. *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

CIS must examine the documents submitted that are now in the record of proceedings and referenced in this discussion. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). 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 classification requested. The petitioner's intent is expressed in the certified Alien Employment Application. A college degree is required for the occupation technical support specialist. Note that even if this petition were considered under the skilled worker³ regulations, the result would be the

³ The regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies the classification of a skilled worker:

same, a college degree is required. While it is clear that regulations governing the skilled worker classification do not contain a baccalaureate degree requirement, CIS is still bound by the regulations and above-cited case law to require the petitioner and beneficiary to meet the requirements specified on the ETA-750. Regardless of classification, the ETA-750 contains the requirements that the beneficiary must have four years of college education.

As noted above, in the subject case, the petitioner indicated by checking box "e" in Part 2 of the petition that states "... A skilled worker (requiring at least two years of specialized training or experience) or professional" Reviewing the experience requirement on Form ETA 750 A above stated, it is blank for the occupation and specifies two years for a related occupation. The employer/applicant inserted the word "Or" in a space requesting the number of years of experience in a related occupation described as Computer Hardware and Software Solutions. Contrary to counsel's contention, the petitioner's intent based upon a plain reading of Part 2 of the Form I-140 petition was to sponsor a professional since no years of experience are required to qualify for the occupation required, technical support specialist, following the stated requirement found under "college" on Part 14 of the certified Form ETA 750 Part A stated as "Bachelors [degree]."

The subject Form ETA 750 Part A requires a four year bachelor degree from a college. Contrary to counsel's assertion, there is not a requirement in the certified Alien Employment Application for a bachelor of *science degree*, rather, the form's "field" section is left blank. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the combination of education and experience may not be accepted in lieu of a four-year degree.

Counsel asserts that the beneficiary has the foreign equivalent of a four-year college degree. The evidence submitted does not support this assertion. The above stated Form ETA 750 part B indicates that the beneficiary has completed two years of university level education in law and psychology.

The petitioner has submitted an education credential evaluation from Dr. [REDACTED] of MIT dated July 18, 2003, of the beneficiary's foreign schooling as it equates to a higher education offered in the United States. It states in pertinent part:

As of ... [the priority date, the beneficiary] ... possessed expertise that is, at a minimum equivalent to a person holding a U.S. High School diploma with specialization in Science, followed by at least three years of undergraduate studies, plus more than three years of professional experience in the area of Technical Support Specialist

A second credential evaluation report from [REDACTED] and [REDACTED] submitted by petitioner dated October 28, 2003, stated in pertinent part:

I [the evaluation service] have reviewed the documents submitted on behalf of [the beneficiary] ... including the educational background letters issued by previous employers and detailed curriculum vitae. I have concluded, based on the three-for-one rule set up by

(B) *Skilled workers*. 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.

the Immigration and Naturalization Service ... [CIS] ... that [the beneficiary's] education and professional work experience are equivalent to a U.S. degree of Bachelor of Science in Computer Information Systems awarded by a regionally accredited college or university in the United States.

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) and 8 C.F.R. § 204.5(l)(3)(ii). Although regulations for H-1B temporary worker status allow a combination of education and experience, the third preference immigrant visas regulations do not. In addition, the Form ETA 750 separates education from experience.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this instance, according to the petitioner's two credential evaluators, the beneficiary has less than a four-year college degree. This matter is not in dispute.

Despite counsel's arguments, CIS will not accept a degree equivalency when a labor certification plainly and expressly requires a specific degree, as is the present case. To determine whether a beneficiary is eligible for a third preference immigrant visa, CIS must ascertain whether the alien is in fact qualified for the certified job. 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. 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).

As noted above it was petitioner's own job requirement that a bachelor degree be the minimum occupation requirement. The certified alien employment certification requirement is listed under "college", then "college degree required", then "major field of study." Counsel, in his brief in this matter, has provided sections of the regulations implementing the Act one of which states the requirement controlling in this matter by defining a professional as one who holds "... at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professionals."⁴

Counsel asserts that if CIS would follow the intention of the petitioner to seek an alternative classification for a Skilled Worker category the petition would be approved as submitted. Clearly, the beneficiary would not be qualified under that category because, under either category, the occupation according to the certified Alien Employment Application still requires a degree that the beneficiary does not possess. See 8 C.F.R. § 204.5(l)(3)(ii)(B).

The above regulations use 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 four year U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.⁵

⁴ 8 C.F.R. § 204.5(1)(2).

⁵ Some nonimmigrant visas do allow a combination of education and experience. See 8 C.F.R. § 214.2(h)(4)(iii)(C)(5).

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.