



U.S. Citizenship
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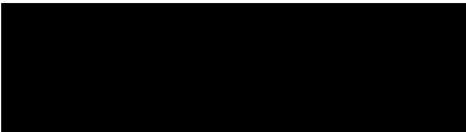
Office: CALIFORNIA SERVICE CENTER

Date: SEP 08 2005

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

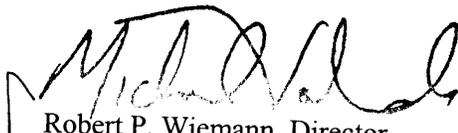
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



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 manufacturer and distributor of portable computers and notebooks. It seeks to employ the beneficiary permanently in the United States as a marketing analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification was 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 with exhibits.

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 August 31, 2001.

The Form ETA 750 Part A prepared by the petitioner states that the proffered position requires:

Block 14 State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in item 13 [job description] above.

<u>Education</u> (Enter number of years)	[Petitioner's Response]
Grade School	<u>Yes</u>
High School	<u>Yes</u>
<u>College</u>	<u>Yes</u>
College Degree Required (specify)	<u>BBA¹ or equivalent</u>
Major Field of Study	<u>Marketing</u>

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

<u>Block 11</u>	[Beneficiary's Response]
Names and Addresses of Schools, Colleges, and Universities attended (include training or vocational training facilities)	<u>Chung-Yu Junior College of Business</u>
Field of Study	<u>Adm., Taiwan, ROC</u>
From ...[mo./yr]	<u>Business Secretarial</u>
To ...[mo./yr.]	<u>08/1982</u>
Degrees or Certificates Received	<u>06/1987</u>
	<u>Certificate of Graduation</u>

With the petition, counsel submitted an educational equivalency certificate entitled "Evaluation Summary" dated July 22, 2002. In pertinent part the certificate stated:

"It is the determination of [the educational equivalency company] ... that the formal education of the above captioned individual [the beneficiary] is equivalent to an Associate degree in Business Administration, or two years towards a U.S. Baccalaureate degree in Business, from an accredited U.S. university"

In that determination, and another evaluation submitted, the preparers both opine that the two year equivalency associates degree together with professional experience of nine and on-half years equates in the preparers' opinions to a bachelor of business administration 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 March 26, 2004 denied the petition.

The director explained in pertinent part:

"Education and experience cannot be combined for the E32 professional classification. There is no three-for-one equivalent like in the non-immigrant H1B regulations. Entry level employment must be at least a baccalaureate degree from an accredited 4-year university or a foreign equivalent of a 4-year degree."

On appeal, the counsel asserts that work experience may be substituted for a college education and degree, and, that the "... classification sought is that of a Professional versus the intention of the petitioner to seek classification for a Skilled Worker category."^{2 3}

¹ Bachelor Degree in Business Administration.

Despite counsel's arguments, 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).

As noted above, it was petitioner's job requirement that a bachelor degree in business administration or degree equivalent 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 an exhibit to 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

The requirements that the occupation is a marketing analyst requiring a bachelor degree in business administration are the petitioner's job requirements as found in the certified alien employment certification. Counsel asserts that if the Service would follow the "... intention of the petitioner to seek classification for a Skilled Worker category ..." the beneficiary would be qualified under that category. However, under either category, the occupation according to the certified alien employment certificate still requires a degree that the beneficiary does not possess.

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(1)(2), and, 8 C.F.R. § 204.5(1)(3)(ii). Although regulations for temporary worker status allow a combination of education and experience⁵, the immigrant visas (EB3) regulations do not. In addition, the Form ETA 750 separates education from experience.

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 U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes. The Form ETA 750 requires a bachelor degree from a college. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

² Counsel raises two procedural questions that are beyond the regulatory jurisdiction of the AAO to decide.

³ The regulation at 8 C.F.R. § 204.5(1)(3)(ii) specifies for the classification of a skilled worker: (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.

⁴ 8 C.F.R. § 204.5(1)(2).

⁵ See 8 C.F.R. § 214.2(h).

Therefore, the combination of education and experience may not be accepted in lieu of a four-year degree. Nonimmigrant visas do allow a combination of education and experience.⁶

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.

⁶ . See 8 C.F.R. § 214.2 (h)(4)(iii)(C)(5).