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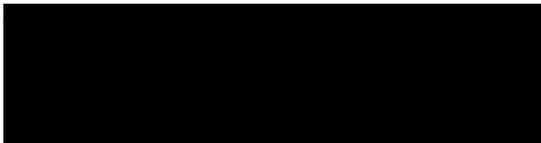
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **SEP 27 2005**
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IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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 furniture manufacturer. It seeks to employ the beneficiary permanently in the United States as a senior accountant. 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, the counsel submits a brief.

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.

The regulation 8 C.F.R. § 204.5(g)(2) states in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

8 CFR § 204.5(l)(3)(ii) states, in pertinent part.

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(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 petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, which is the date the Form ETA 750 Application for Alien Employment Certification, was accepted for processing by any office within the employment system of the U.S. Department of Labor. The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

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(1)(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(1)(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(1), 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 6, 2002. The Form ETA 750 states that the proffered position requires a bachelor’s degree in accounting and three years occupational experience.

With the petition, counsel submitted prior occupation work experience letters, a certificate from the State of Delaware, the State Board of Accountancy, stating that the beneficiary has met its qualifications for a certified public accountant, a credentials equivalency certificate stating that beneficiary has the equivalent of a bachelor’s degree in accounting based upon a two year course of instruction with the University of Bombay, India, and, a certificate of membership awarded by the Institute of Chartered Accountants of India,¹ a diploma, and, an education transcript.

Because the evidence submitted was insufficient to demonstrate that the beneficiary has a baccalaureate degree or a foreign equivalent degree, the Nebraska Service Center, on August 13, 2003, requested additional evidence pertinent to the beneficiary’s education. The Service Center specifically requested:

Please submit evidence that the beneficiary holds a foreign degree, which is equivalent to a U.S. bachelor’s degree in accounting. Your evidence indicates that the only degree which he holds is one that is equivalent to three years of undergraduate study in business administration. He subsequently was awarded a certificate of membership from the Institute of Chartered Accountants of India but the evidence does not establish that this certificate is a degree. While the conjunction of this certificate and the three-year degree have been found to be equivalent to a bachelor’s degree in accounting from a regionally accredited institution, and that is sufficient for H-1B purposes, it does not meet the specific requirement on your ETA-750 of a bachelor’s degree in accounting with no provision for the acceptance of academic credentials equivalent to that.

¹ According to “Annexure A” included as an exhibit, the Institute of Chartered Accountants of India offers accountants the privilege of receiving a designation similar to the “C.P.A.” designation granted in the United States by sitting for and passing an examination after three years of practical training.

In response, the counsel submitted another credentials evaluation, a letter from the same service asserting that the attainment of certification from Institute of Chartered Accountants of India is a “degree” with a chart stating professional equivalencies based upon membership in professional associations.

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 September 30, 2003, denied the petition.

On appeal, counsel asserts² that:

The Director’s decision to deny the I-140 [petition] for a “professional” on grounds that the beneficiary’s educational qualifications (although equivalent to a bachelor’s degree) are in fact not an actual bachelor’s degree is arbitrary & capricious and in direct contradiction to regulation found at 8 C.F.R. § 204.5(1)(3)(ii)(C). In particular, regulations clearly state that an I-140 filed on behalf of a “professional” must be accompanied by evidence that the beneficiary holds either a U.S. bachelor’s degree or a foreign equivalent. The evidence on the record shows that the beneficiary’s academic qualifications have been found to be the foreign equivalent to a U.S. bachelor’s degree

To determine whether a beneficiary is eligible for a third preference immigrant visa (for either the “professional classification” or “skilled worker classification”), 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 above regulation, 8 C.F.R. §204.5(l), 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. 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). Therefore, the combination of education and a professional “certificate of membership” may not be accepted in lieu of a four-year degree. The July 6, 2001 and the August 20, 2003 evaluations classified the beneficiary’s bachelor degree as the academic equivalent of three years of university study. The AAO finds that the passage of the two professional examinations as demonstrated by the two certificates in the record does not establish that the beneficiary earned any additional degree or degrees from a college or university. Nothing in the record suggests that the Institute of Chartered Accountants of India or the Institute of Cost and Works Accounts of India is a college or university that awards degrees in specific areas of concentration. The record does not contain an official college or university record from either institute showing the beneficiary has been awarded a degree. Neither the certificates nor the educational evaluation state that the beneficiary has earned any academic degree aside from the 1991 bachelor’s degree,

² Counsel also raises on appeal an issue relating to the denial of the beneficiary’s adjustment petition. This matter is beyond the scope of the AAO’s jurisdiction since by regulation such a decision cannot be appealed.

The certified Alien Employment Certification in this matter stated that the position of senior accountant required a bachelor's degree in accounting. 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.