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**U.S. Citizenship
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FILE:



Office: VERMONT SERVICE CENTER

Date: **SEP 27 2005**

EAC 03 248 56253

IN RE:

Petitioner:



Beneficiary:

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 (AAO) on appeal. The appeal will be dismissed.

The petitioner is a discount store. It seeks to employ the beneficiary permanently in the United States as an accountant. 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 provide sufficient evidence that the beneficiary is qualified for the proffered position. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification, and submits further documentation.

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.

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.

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 April 30, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (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 accountant. In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | |
|-------------------------|----------|
| 14. Education | |
| Grade School | - |
| High School | - |
| College | 4 years |
| College Degree Required | Commerce |
| Major Field of Study | - |

The petitioner also specified that any applicants have two years of experience in the job offered. Under Item 15, the petitioner did not set forth additional special requirements. The job offered lists the following duties on Item 13: "Analyze business procedures, evaluate work problems like inventory, cost analysis, preparation of accounts including general ledger, financial forecasting, management, development, audit of budget, monthly, quarterly closing."

The beneficiary set forth his 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), he indicates that he attended Progressive High School in Hyderabad, India, general studies, from June 1974 to March 1984, and obtained a high school certificate or diploma. The beneficiary then indicates he attended Anwaruloom College in Hyderabad, India, general studies, from June 1984 to March 1986 receiving a degree or certificate in "inter". Finally the beneficiary indicates he received a degree or certificate in "B Com" from Anwaruloom College, in Hyderabad, India, studying commerce, from June 1986 to April 1989. He provides no further information concerning his 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 he worked for two previous employers as follows in reverse chronology:

1. [REDACTED] Hyderabad, India, accountant/auditor, September 1995 to April 1998;
2. [REDACTED] Hyderabad, India, accountant, January 1991 to May 1995.

Because the evidence was insufficient, the director requested additional evidence on November 13, 2003, specifically requesting proof that the petitioner obtain an advisory evaluation of the beneficiary's formal education that determined the level and major field of educational attainment, in terms of equivalent education in the United States. The director stated that an acceptable evaluation should consider formal education only, not practical; state if the collegiate training was post-secondary; provide a detailed explanation of the material evaluated, and briefly state the qualifications and experience of the evaluator.

The director also requested that the petitioner submit evidence to establish that the beneficiary possessed the required two years of work experience as an accountant as of April 30, 2001, by submitting evidence relating to qualifying experience in the form of letters from current or former employers or trainers. Such letters should

include the name, address and title of the writer, and a specific description of the duties performed by the alien or of the training received.

In response to the director's request for evidence, the petitioner submitted a educational equivalency document prepared by [REDACTED] and [REDACTED] Edison, New Jersey. This document stated that based on copies of documents provided by the beneficiary, the evaluator determined that the beneficiary's bachelor of commerce degree from Osmania University, was the equivalent to three years of academic studies towards a bachelor's degree in accounting from a U.S. accredited college or university.¹ The evaluator then examined the beneficiary's six years of work experience and determined that it was equivalent to two years of academic studies towards a bachelor's degree in accounting from an U.S. university. The evaluator stated that the beneficiary's bachelor's degree in commerce and over six years of progressively responsible work experience in the field of accounting were the equivalent of a bachelor degree in accounting from a U.S. accredited college of university. The petitioner also submitted letters of employment verification from the beneficiary's two former employers in India.

The director denied the petition on March 19, 2004. The director stated that the Form ETA 750 established that the minimum education for an applicant to satisfactorily perform the duties of the proffered position was four years of college studies in commerce. The director stated that the university documentation as well as the educational equivalency document established that the beneficiary's bachelor degree in commerce was the equivalent of three years of academic studies in accounting from a U.S. accredited college or university. The director further noted that the Form ETA 750 had no provision for the acceptance of less than four years of college for the position, and that the beneficiary's studies were not the equivalent of four years of studies in commerce in the United States.

On appeal, counsel asserts that the evaluator correctly considered the beneficiary's six years of work experience to be the equivalent of two years of college education. Counsel states that the petitioner, in its job vacancy announcement, asked for a two years college education, and that the Department of Labor subsequently instructed the petitioner that the two years of college education had to be amended to four years. Furthermore, counsel states that the petitioner obtained an educational evaluation document that determined that the beneficiary's six years of work experience is equivalent to two years of college level education. Counsel states that the educational equivalency documentation company correctly cited to C.F.R 214.2 (H)(4), in examining the beneficiary's combined education and work experience. Counsel submits the petitioner's job vacancy announcement, as well as an additional letter from [REDACTED] evaluator, dated April 16, 2004. In this letter [REDACTED] states that 8 C.F.R. § 214.2(h)(4) states that for purpose of determining equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college-level training the alien lacks.

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

¹ It is noted that although the beneficiary identified Anwaraloom College as where he studied commerce, the documentation submitted by the petitioner and the evaluator both identify the beneficiary's place of studies as Osmania University.

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, in the instant petition, includes four years of college and a baccalaureate degree in commerce.

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 commerce; and two years of experience in the job offered.

The petitioner has established that the beneficiary has the requisite work experience as an accountant. The remaining issues to be discussed in this decision are whether or not the beneficiary has four years of college, and a bachelor's degree or its equivalent in commerce.

Upon review of the record, the beneficiary’s provisional certificate from Osmania University clearly identifies the beneficiary’s studies in commerce as a three year program. 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). Although the ITES Inc. evaluation submitted to the record is given less weight because it combined both the beneficiary’s university studies and his work experience, the evaluation does clearly state that the beneficiary had three years of university studies. Thus, the petitioner has not established that the beneficiary had four years of college.

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 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 India 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 a four-year curriculum. The evaluation submitted with the evidence in this proceeding suggesting that the beneficiary's three-year diploma, and his subsequent employment experience should be considered as the equivalent of a baccalaureate degree 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. “Commerce” listed under a question eliciting “College Degree Required,” can lead to no alternate conclusion, especially since additional employment experience was set forth under the box eliciting employment experience requirements.

The AAO concurs with the director's decision that the petitioner has not established that the beneficiary is qualified for the proffered position, either under a skilled worker or a professional under the third preference immigrant visa category, since it has not proven that the beneficiary holds a four-year 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.