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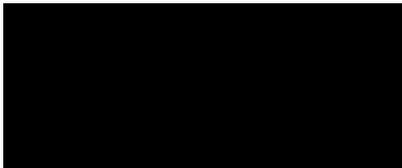
Office: NEBRASKA SERVICE CENTER

Date: **SEP 30 2005**

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: 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 retail firm. It seeks to employ the beneficiary permanently in the United States as a chief computer programmer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary had demonstrated that he met the minimum educational qualifications required on the Form ETA 750, and denied the petition accordingly.

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 or seasonal nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 24, 2001.

The Form ETA 750 states, in box # 14, that the position of chief computer programmer requires a bachelor's degree in MIS, CIS or business administration and five years of experience in the offered position or in the related occupations of senior applications programmer, chief computer programmer, or software engineer. In box # 15, the application specifies, "Minimum five years experience using RPG, CL and COBOL on AS/400 platform," adding that the experience "can be gained concurrently with experience requirements listed in item 14."

On the Form ETA 750B, signed by the beneficiary, the beneficiary claimed to have worked for the petitioner as of October 2000.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) of trainer(s) and shall 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. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

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 the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

The I-140 petition was submitted on February 6, 2004. On the petition, the petitioner claimed to have been established in 1917, to currently have 5,000 employees, to have a gross annual income of \$854.4 million, and to have a net annual income loss of \$28.7 million.

In support of the petition, the petitioner on February 6, 2004, submitted:

- A Form G-28 appointing counsel to represent the petitioner;
- An original certified ETA 750;
- The petitioner's support letter;
- A copy of the beneficiary's diploma issued by the University of Delhi in 1986, certifying the beneficiary's qualifications for a Bachelor of Commerce degree;
- Educational credential evaluations from ██████████ Ph.D. ██████████ of Educated Choices, L.L.C., and from ██████████ of Thomas Edison State College; and,
- Letters from the beneficiary's previous employers.

In a decision dated May 7, 2004, the director determined, based upon the credential evaluations, that the beneficiary had earned the equivalent of 93 total university-level semester credits at the University of Delhi, India and at the National Institute of Information Technology, also in India, while the standard baccalaureate degree in Computer Information Systems (CIS) requires 120 semester hours of formal credit hours as awarded at a regionally accredited U.S. college or university. The director therefore denied the petition.

On appeal, counsel submits a brief.

Counsel states on appeal that the ETA 750 does not specify as the minimum educational requirement that candidates obtained, at a minimum, four years of formal education in CIS, but only that they possess a baccalaureate degree in CIS. He further asserts that the beneficiary's degree is a foreign degree equivalent to a U.S. bachelor's degree.

The evidence pertaining to the beneficiary's qualifications consists of:

- The February 18, 2002 credentials evaluation of ██████████
- A diploma from the University of Delhi certifying that the beneficiary had obtained its Bachelor of Commerce degree in 1986; and,
- The February 18, 2002 evaluation of ██████████

The issue is whether the beneficiary met all of the requirements stated by the petitioner in block 14 of the labor certification as of the day it was filed with the Department of Labor. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which as noted above, is March 21, 1997. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The record indicates that in the beneficiary earned a three-year, 90-semester-units, Bachelor of Commerce Degree from the University of Delhi along with the equivalent of three more semester units in Computer Software and Applications from the National Institute of Information Technology, also located in India. ██████████ evaluation determined the beneficiary had the equivalent of a U.S. bachelor's degree in computer information systems based upon the combination of the beneficiary's formal education and nine years and five months of professional experience in the field. Evaluator ██████████ offered much the same opinion as ██████████ on the equivalence to a U.S. bachelor's degree in computers, again treating professional experience equivalent to formal classroom education. The evaluations both appear to have equated three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions.

According to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. After 12 years of primary and upper primary school, a bachelor's degree in the arts, commerce, or the sciences may be earned after just three years of higher education. A bachelor's degree in a professional field of study such as agriculture, dentistry, engineering, pharmacy, technology, or veterinary science generally requires four years of higher education. See generally Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework-Degree Structure*, (last updated October 1, 2001), available at <http://www.education.nic.in/htmlwebhigedu.htm>. If supported by a proper credentials evaluation, a four-year bachelor's degree from India might reasonably be deemed to be the "foreign equivalent degree" to a United States bachelor's degree. However, in *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977), the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States bachelor's degree because the degree did not require four years of study. *Matter of Shah*, at 245. Based on the same reasoning, the beneficiary's three-year Bachelor of Commerce degree from University of Delhi will not be considered the "foreign equivalent degree" to a United States bachelor's degree for purposes of this preference visa petition.

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 at 8 C.F.R. § 204.5(l)(3)(ii) specifies for the classification of a professional that:

(C) *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 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 showing that the minimum of a baccalaureate degree is required for entry into the occupation.

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 and four (4) years of education. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N at 245. Therefore, the combination of education and experience may not be accepted in lieu of a four-year degree. The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

Additionally, even if the petition were submitted for consideration under the skilled worker category, as stated in 8 C.F.R. § 205.5(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 foreign degree. The beneficiary cannot qualify as a skilled worker unless the petitioner proves that the beneficiary meets its additional requirement of having a foreign degree equivalent to a U.S. bachelor's degree, as specified on the Form ETA-750.

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The petitioner has accordingly not established that the beneficiary has the foreign equivalent of a bachelor's degree in computer information systems on April 24, 2001. Therefore, the petitioner has not overcome this portion of the director's decision.

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.