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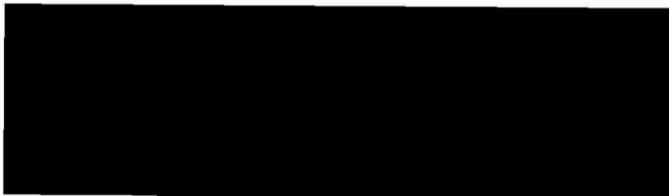
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. 3000  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

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FILE: [Redacted] Office: TEXAS SERVICE CENTER Date: DEC 18 2006  
SRC 04 095 51729

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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer consulting and information technology business. It seeks to employ the beneficiary permanently in the United States as a technical analyst. 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 she determined that the petitioner failed to provide sufficient evidence that the beneficiary is qualified for the proffered position, based on his academic credentials. 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 academic credentials and work experience can be combined to evaluate the beneficiary's qualification for the proffered position.

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.

Regardless of whether the petitioner is seeking to classify the petition under 203(b)(3)(A)(i) or (ii) of the Act, however; 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 October 1, 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 technical analyst. In the instant case, item 14 describes the requirements of the proffered position as follows:

- |     |              |   |
|-----|--------------|---|
| 14. | Education    |   |
|     | Grade School |   |
|     | High School  | - |
|     | College      | X |

College Degree Required  
Major Field of Study

Bachelor's Degree or equivalent  
Computer Science or related field

The petitioner also specified that any applicants have two years of experience in the job offered or two years of experience in the related occupation of programmer/Analyst, SAP Consultant. Under Item 15, the petitioner set forth no additional special requirements. The job offered lists the following duties on Item 13:

Designing, testing, and developing computer programs and applications for HR and payroll systems using SAP/R3 software, ABAP/4 and FI-CO modules programming tools and applications; analyze project requirements to determine feasibility of design; install and test new systems; provide technical and programming support when necessary. Multiple positions available.

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 indicated that he attended the University of the Orange Free State, South Africa, from August 1989 to June 1993, studying computer science, for a bachelor of science degree. 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 in multiple positions for multiple past employers as follows in reverse chronology:

1. The petitioner, [REDACTED], Georgia, Technical Analyst, December 2000 to the time the beneficiary signed the Form ETA 750, September 14, 2001;
2. Integration Network, Silver Spring, Maryland, Programmer Analyst, March 1998 to December 2000;
3. International Software Designs, no address given, SAP Consultant, December 1996 to March 1998.

The petitioner submitted a degree equivalency document from Washington Evaluation Service, Washington, D.C. dated March 29, 1998. In this document, [REDACTED] stated the following: "[The beneficiary's] academic studies and degree combined with his three years professional work experience in the field of computer science including two and one-half years using the SAP system, can be considered to be academically equivalent to a Bachelor of Science in Computer Science as awarded by an accredited U.S. university." [REDACTED] further stated : "[The beneficiary's] computer experience combined with bachelor's degree, can be considered to be equivalent to a major in Computer Science."

The petitioner also submitted the beneficiary's diploma, translation of his coursework into English, and copies of eight certificates for short term training courses taken by the beneficiary in computer science fields from February 1995 to February 26, 1999, as well as certification in COBOL programming undertaken in a three month training course from August to November 1994.

Because the evidence was insufficient, the director requested additional evidence on February 9, 2005, specifically requesting a professional evaluation of the beneficiary's foreign degree prior to adjudication of the petition. The director noted that the academic evaluation submitted to the record by [REDACTED] included the beneficiary's work experience. The director stated that an acceptable evaluation should consider formal education only, not practical experience; state if the collegiate training was post-secondary education, provide a detailed explanation of the material evaluated, rather than a simple conclusory statement, and briefly state the qualifications and experience of the evaluator providing the opinion.

In response to the director's request for evidence, the petitioner submitted a document, Evaluation of Foreign Education Credentials, from [REDACTED] New York, New York. In this document, [REDACTED] evaluated the beneficiary's academic records from South Africa. [REDACTED] then stated that the beneficiary "had the equivalent of a U.S. bachelor of Science degree with a major in mathematics and computer science," and that he additionally held "a U.S. professional certificate in computer science, with a major in Cobol programming."

On May 4, 2005, the director denied the petition. In his decision, the director stated that the petitioner had submitted two academic evaluation reports. The director noted that the first report stated that "it took one to two years of additional collegiate study to attain a bachelor degree. . . or two or four years of relevant professional experience for equivalency to the requisite degree." The director then noted that the second evaluator, as well as the first evaluator, did not just examine the beneficiary's academic credentials, and noted the second evaluator stated: "[the beneficiary's] diploma and transcript, transcript, in level and intent, are equivalent to a U.S. Bachelor of Science degree (BS) with a major in mathematics and computer science, granted by a regionally academic institution in the United States."

The director stated that the second educational equivalent evaluation was inconsistent with the first evaluation. The director further noted that the beneficiary's coursework transcript for his baccalaureate studies only showed the beneficiary taking one course in computer science and another course in mathematics. The director also noted that the other eighteen courses were all science related and in such fields as psychology, zoology, and biology. The director cited *Matter of Ho*, 19 I&N Dec. 582 (BIA 1988) and stated that it was incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. The director then stated that the petitioner had not established that the beneficiary had the required bachelor's degree or foreign equivalent degree in computer science or a related field as stipulated on the Form ETA 750.

On appeal, counsel states that the Form ETA 750 does not state bachelor's degree or equivalent degree, but rather bachelor's degree or equivalent in computer science or a related field. Counsel further asserts that a combination of education and/or experience is acceptable and equivalent to a baccalaureate degree and that petitioner had established the beneficiary had the necessary academic qualifications based on either equivalency evaluation. Counsel states that the first evaluation report uses a combination of education and work experience when evaluating the beneficiary's qualifications, while the second evaluation report determined the beneficiary satisfied the education requirement based on education alone.

Counsel then stated that any of the following three alternatives is equivalent and acceptable for the proffered position:

A bachelor's degree in computer science or a related field;

A combination of academic coursework and work experience equivalent to a bachelor's degree in computer science or a related field; or

Work experience only, equivalent to a bachelor's degree in computer science or a related field.

Counsel states that while the petitioner responded to the director's request for further evidence, the original evaluation report established that the beneficiary qualified for the proffered based on his academic coursework and his work experience. Counsel states that different degree evaluation agencies have different criteria and methods that they use to evaluate submitted documents, so it is not unusual that different agencies provide somewhat different evaluations based on the same set of documents. Counsel concludes by stating the beneficiary satisfies the stipulated requirement of the Form ETA 750, regardless of which degree evaluation report is considered.

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 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 a baccalaureate degree.

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 which, in this case, includes a bachelor's degree of science or equivalent (four years in college) in computer science or a related field; and two years of experience in the job offered or in the related occupation of programmer/analyst, SAP consultant.

The petitioner has established that the beneficiary has two years of experience in the job offered or in the related occupation of SAP analyst. The record also reflects that the beneficiary has a bachelor's of science degree awarded by The University of the Orange Free State, South Africa. The only issues to be discussed in the remainder of this decision is whether or not the beneficiary has a four year bachelor's degree in computer science or a related field or a foreign degree equivalent.

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). 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 simply 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 South Africa could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, based on the translation of the beneficiary's transcript, from which ostensibly both evaluators based their evaluations, the beneficiary appears to have three years of studies in the area of science with additional subjects from the medical faculty, such as pharmacology, psychology and anatomy.<sup>1</sup> It is noted that the translation of the beneficiary's university level

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<sup>1</sup> The translation only notes classes at the first, second and third year level. The translation of this document also did not comply with the terms of 8 C.F.R. § 103.2(b)(3): *Translations*. Any document containing foreign language submitted to [CIS] shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate

coursework does not appear to be certified or verbatim. The courses on the original transcript are translated out of order and with no year designation on the translated version. Furthermore, the untranslated transcript appears to list studies undertaken in the years 1990 to 1993.<sup>2</sup> The copies of certificates for training undertaken by the beneficiary in the field of computer science do not appear to be university-level studies, and are not contained on the beneficiary's university transcript. The dates for these certificates range from 1994 to 1999. [REDACTED] in his evaluation of the beneficiary's academic credentials also appears to regard the beneficiary's studies as less than a four year baccalaureate degree, when he comments: "[The beneficiary's] computer experience combined with bachelor's degree can be considered to be equivalent to a major in Computer Science." Thus, the record is not persuasive that the beneficiary has a four-year bachelor of science degree from South Africa.

Furthermore and equally important, the translated version of the beneficiary's coursework, as correctly noted by the director, lists only one mathematics course and one computer science course. Thus, the record does not reflect any evidence that based on his university studies, the beneficiary has a baccalaureate degree in mathematics and computer science, as stated by the second evaluator.

Thus, the evaluations submitted to the record suggesting that the beneficiary's diploma in science, or his years of university level studies combined with his further training and work experience in computer science should be considered as the equivalent of a U.S. baccalaureate degree in computer science or a related field are not accepted as competent and probative evidence. The evaluations are given little evidentiary weight in these proceedings.

In addition [REDACTED]'s evaluation in which he combines the beneficiary's academic studies with his work experience, is not considered competent and probative evidence, because it includes employment experience in the evaluation. Contrary to counsel's assertions, 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. Also 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. A "B.S. or equivalent" 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. If CIS were to allow the petitioner to ignore specific terms on the Form ETA 750, as in this case, a four year degree requirement in computer science or a related field, a scenario would be set up wherein the petitioner could have rejected U.S. workers with no college degree, or with less than four years of college, but with various years of experience, and then hire an alien beneficiary with those same qualifications. This recruitment would not be fair to U.S. workers, and would be contrary to the intent of the U.S. labor certification regulations. The requirements set forth on the Form ETA 750 are not, in this vein, "paper" requirements.

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from the foreign language into English.

<sup>2</sup> On Form ETA 750, Part B, the beneficiary claimed that he attended the University of Free Orange State and studied computer science there from 1989 to 1993. This statement conflicts with the beneficiary's transcript and copies of his training certificates. *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice."

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 in computer science or a related field.

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.