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U.S. Citizenship
and Immigration
Services

B6



FILE: [Redacted] Office: NEBRASKA SERVICE CENTER Date: JUL 27 2006
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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.

A handwritten signature in black ink, appearing to read "Michael Valdez".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The service center director denied the employment-based visa petition, and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a software consultancy and development company. It seeks to employ the beneficiary permanently in the United States as a software engineer. 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, based on her undergraduate degree, was qualified to perform the duties of the position.¹

On appeal, counsel states that Citizenship and Immigration Services clearly misread the educational evaluation of the beneficiary's two degrees. Counsel 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 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 are members of the professions.

In addition, 8 C.F.R. §204.5(l)(3)(ii)(C) states:

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. Evident 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 showing that the minimum of a baccalaureate degree is required for entry into the occupation

With regard to the second issue raised by the director, namely, the beneficiary's work experience, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides:

(ii) Other documentation—

(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.

¹ The record also contains a subsequent I-140 petition filed by a San Antonio company that appears to be related to the instant petitioner for the beneficiary that was approved by the Texas Service Center on November 3, 2005. This petition contained a different ETA 750 certified by the Department of Labor on March 17, 2003.

- (B) *Skilled worker.* 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.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on 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. See 8 C.F.R. § 204.5(d). Here, the Form ETA 750 was accepted for processing on March 17, 2003. The proffered wage as stated on the Form ETA 750 is \$79,000 a year. In the petition, the Form ETA-750 stated that a "B.S." was required for the position and listed the required major fields of study as "Comp Science/Mathematics/Business Admin or related." The position also required two years of experience in the proffered job or in the related occupation of programmer/analyst. Section 15 of the Form ETA 750 indicated that 40 per cent travel to client sites within the United States was required. On the petition, the petitioner claimed to have been established in 1996, to have more than 300 employees, and to have a net annual income of \$5,653,721.

In support of the petition, the petitioner submitted an evaluation report from [REDACTED] Worldwide Education Evaluators, Inc., Atlanta, Georgia. [REDACTED] reviewed the education documents of the beneficiary and noted that the beneficiary had graduated from the University of Madras after a three-year program of study in business administration. [REDACTED] also noted the beneficiary's studies in a two-year (four-semester) program of graduate study equivalent to a master's degree in business administration. The evaluator then stated that the beneficiary's degrees from the University of Madras are equivalent to the degree of a bachelor of business administration and a master of business administration, from a regionally accredited university in the United States. The evaluator also noted the beneficiary's additional studies in computer applications. The record also contains one diploma from Loyola College, Chennai, India for a one-year diploma in computer applications in 1998. The petitioner also submitted certificates of the beneficiary's non-collegiate level training in computer applications and work experience.

On December 28, 2004, the director denied the petition. In his denial of the petition, the director noted that the evaluator of the beneficiary's educational credentials stated that the beneficiary's two degrees, taken together, were equivalent to a bachelor's and master's degree in business administration from a regionally accredited U.S. university. The director stated that the Form ETA 750 specified that the position required a bachelor's degree, and that a foreign equivalent to a degree is a degree awarded by an institution outside of the United States for a course of study that is similar in complexity and length to a course of study for which a U.S. institution would grant a baccalaureate degree. The director then stated that such equivalency does not include a series of diplomas or certificates evaluated to be equivalent to a bachelor's degree. The director also noted that there is no evaluation of education and work experience allowed when examining the equivalence of foreign studies to a U.S. bachelor's degree under the professional classification. The director then determined that the petitioner had not established that the beneficiary met the minimum requirements on the Form ETA 750, and thus, she was not qualified to perform the duties of the proffered position.

On appeal, counsel states that CIS misread the education evaluation submitted to the record. Counsel states that the initial evaluation of the beneficiary's degrees does not consider certificates and diplomas as part of the evaluation but merely states at the end of the summary of the evaluation that the beneficiary also possesses diplomas in computer applications, C++, Oracle and RDBMS. Counsel submits a second evaluation from Worldwide Education Evaluators, Inc. to clarify the evaluations of the beneficiary's university degrees in business administration. In the second evaluation, [REDACTED] states that many bachelor degrees from India are three years in length and are equivalent to the completion of three years of study toward a four-year bachelor's degree with a U.S. university. [REDACTED] then stated that three-year bachelor degrees in combination with a two-year master's degree are considered equivalent to the completion of a U.S. baccalaureate degree. [REDACTED] states that many U.S. universities offer one-year master's degree programs, which when taken with a four-year bachelor's degree total five years of university study. [REDACTED] concludes that a three-year bachelor's degree and two-year master's degree from a university in India are considered to be equivalent to a bachelor's and master's degree from the United States. [REDACTED] also notes that the computer certificates were not considered to be part of the beneficiary's educational evaluation.

The petitioner also submitted a statement from [REDACTED] Information Technology Management, Georgia Tech, College of Management, Atlanta, Georgia. [REDACTED] stated that the education credentials of the beneficiary are equivalent to a U.S. bachelor degree in business administration with one year of credit towards a master's degree in business administration. [REDACTED] states that if the beneficiary wished to enter the doctoral program at Georgia Tech she would be required to take some additional courses at the graduate level.

The Form ETA 750 requires a bachelor of science degree in computer science, mathematics business administration or a related field. It also requires 4 years of college education.

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). The regulation at 8 C.F.R. § 204.5(1)(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 concerning the professional classification 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.

It is noted that the director correctly stated that the Form ETA 750 does not provide for the acceptance of less than a bachelor's degree. The director also correctly noted that the evaluator stated that the beneficiary's two combined degrees were equivalent to a bachelor's and master's degree in business administration from a U.S. university. In his second evaluation, [REDACTED] reiterates this statement. However, the beneficiary's undergraduate degree in business administration is a three-year degree and there is no evidence in the record that her course load during these three years was the equivalent of a corresponding U.S. baccalaureate degree. Therefore her three-year undergraduate degree is not equivalent to a U.S. baccalaureate degree. A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Thus, the beneficiary's undergraduate degree from the University of Madras cannot be considered a foreign equivalent degree, or the equivalent of a U.S. undergraduate degree in business administration. The beneficiary's three years of undergraduate studies does not satisfy the four-year requirement.

In the additional statement submitted to the record on appeal, [REDACTED] statement also appears to combine the two degrees to find the beneficiary's five years of undergraduate and graduate studies to be the equivalent of a four-year bachelor's program with one year of credit toward a master's degree. [REDACTED] correctly analyses the equivalency of the beneficiary's three years of undergraduate studies to three years of U.S. undergraduate studies. However, his analysis still does not conform to the regulatory definition of a professional that requires one degree that is determined to be the equivalent of a U.S. baccalaureate degree.

In this case, the record demonstrates that the beneficiary holds a master's degree in the field of business administration from the University of Madras, India. The AAO finds this degree to meet the requirements of the regulations. It is a single degree in the specified field of study. Moreover, the degree represents a total of at least five years of study, meeting the specific requirement on the ETA 750 that the beneficiary have four years of college education, because entrance to the 2-year master's program would be contingent upon the completion of a relevant undergraduate course of study. Based on the documentation in the record, the beneficiary has completed five years of college education.

Thus, the petitioner has established that the beneficiary is qualified to perform the duties of the position. The director's decision is withdrawn.

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 met that burden with regard to the beneficiary's qualifications. Therefore the director's decision will be withdrawn and the appeal will be sustained. The petition will be approved.

ORDER: The appeal is sustained. The petition is approved.