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FILE: [REDACTED]
WAC 04 138 51172

Office: CALIFORNIA SERVICE CENTER

Date: JUL 18 2006

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, Chief
Administrative Appeals Office

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

The petitioner is a corporation that provides consulting engineering services for mechanical and electrical systems. It seeks to employ the beneficiary permanently in the United States as a civil engineer. 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 Alien Employment Certification accompanying the petition specified and denied the position accordingly.¹

On appeal, the counsel submits a brief.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for granting 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.

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.

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(l)(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(l)(3)(ii)(C) states, in pertinent part:

¹ It is noted that the petitioner has submitted tax returns dated 2001, 2002 and 2003 that stated taxable incomes of \$43,680.00, a loss of <\$14,944.00> and a loss of <\$31,395.00> respectively. The proffered wage is \$45,656.00. There appears to be a lack of an ability to pay the proffered wage based upon the financial information submitted. Should this matter be further pursued, this issue should be determined.

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(l), 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 December 24, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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, Form ETA 750 A, item 14 describes the requirements of the proffered position and occupation of civil engineer as follows:

14.	Education (enter number of years)	
	Grade School	<u>8</u>
	High School	<u>4</u>
	College	<u>4</u>
	College Degree Required	<u>Bachelor of Science or equivalent</u>
	Major Field of Study	<u>Civil Engineering or related</u>
	Training	Blank ²
	Experience	
	Job Offered	
	Number -Years / Mos.	Blank
	Related Occupation	
	Number -Years / Mos.	Blank
	Related Occupation	
	Specify	Blank

The employer who is the petitioner has prepared the above ETA 750 A as an essential part of the labor certification process used to support a preference visa petition that is employment based. The employer who desires to employ an alien in the United States must undertake a multiple step process as directed by the United States Department of Labor which, once approved, certifies the Alien Employment Application for the occupation based upon the above criteria. In the present case, the above requirements also state that the

² The items specified as "Blank" were marked by the petitioner in the above section by the sign for "equals" (i.e. "=").

occupation of civil engineer requires four years of college resulting in the attainment of a Bachelor of Science or equivalent degree in the major field of study in civil engineering or related field:

Along with Form ETA 750, Part A, set forth above; the employer also is required to submit Form ETA 750, Part B that is a "Statement of Qualifications of Alien." Part B identifies the alien, specifies his current and prospective address in the United States, his education including trade and vocation training, and lists his work experience.

The Form ETA 750 Part B prepared by the beneficiary states the following education history:

Block 11

Names and Addresses of Schools, Colleges, and Universities Attended (including trade or vocational training facilities)

Lviv Polytechnical Institute, Ukraine

Field of Study	<u>Architecture</u>
From ...[mo./yr]	<u>09 [September] 95 [1995]</u>
To ...[mo./yr.]	<u>06 [June] 99 [1999]</u>
Degrees or Certificates Received	<u>Certificate</u>

Lviv Civil Engineering Technology, Ukraine

Field of Study	<u>Civil Engineering</u>
From ...[mo./yr]	<u>09 [September] 94 [1994]</u>
To ...[mo./yr.]	<u>05 [May] 97 [1997]</u>
Degrees or Certificates Received	<u>Diploma A.A. Degree³</u>

The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the Alien Employment Certification accompanying the petition specified, and denied the petition on September 21, 2004.

On appeal, the counsel recites the language of section 13 of the ETA 750, Part A (i.e. Bachelor of Science or equivalent, Civil Engineering or related) to assert that the director erred by finding that the beneficiary has not earned the foreign equivalent to a U.S. bachelor's degree; that the beneficiary has completed more than the semester credits required in the United States for the attainment of a degree in civil engineering and architecture; and, that "the Course-by-Course" credential analysis in civil engineering and architecture relate to "... the business nature and job requirements."

The subject Form ETA 750 Part A requires a degree from a college and the completion of four years of baccalaureate studies. CIS regulations do not provide that a combination of education and experience may be accepted in lieu of a four-year degree. While the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) do state that the "relevant post secondary education may be considered as training for the purposes of this paragraph;" there is

³ This item has been reviewed and corrected by the U.S. Department of Labor (USDOL) by what appears written in pen an "a" over another obscured letter and writing two dates one initialed "M Y" and the "M." There is no corresponding USDOL correspondence relative to this amendment.

no regulation that would allow for a converse, that the experience may be considered for education requirements. The record of proceeding demonstrates that the beneficiary has three years of college education and several additional diplomas and certificates issued by various nonacademic services.

Petitioner's clear intent is expressed in the certified Alien Employment Application. A four-year college degree is required in Civil Engineering or related. Note that even if this petition were considered under the skilled worker regulations, the result would be the same. While it is clear that regulations governing the skilled worker classification do not contain a baccalaureate degree requirement, CIS is still bound by the regulations and above-cited case law to require the petitioner and beneficiary to meet the requirements specified on the ETA-750. *See* 8 C.F.R. § 204.5 (l)(3)(ii)(B). Regardless of classification, the ETA-750 contains the requirements that the beneficiary must have four years of college education culminating in a bachelor's degree (or equivalent) in civil engineering or related field of study. The beneficiary does not meet this requirement according to the Form ETA 750 Part B recited above.

An education credential evaluation submitted by the petitioner to determine the beneficiary education experience prepared by the by World Education Services, dated August 4, 2000, stated as follows:

U.S. Equivalency Summary

“High school diploma and associates degree in civil engineering technology from, and two years undergraduate study in architecture at a regionally accredited institution.”

An education credential evaluation submitted by the petitioner prepared by the by International Education Evaluators Services L.L.C., dated September 17, 2001, stated that the beneficiary has a diploma in 1977 from the Lviv Civil Engineering Technology, Ukraine, that the evaluator stated is the “equivalent of a graduation from a technical/academic secondary school.” Therefore, the evaluator recognizes that Lviv Civil Engineering Technology is a secondary school, not an institution of higher education authorized to issue a diploma such as those issued by higher educational institutions in fields of art and science. However, the evaluator then stated that the education received from the secondary school is the equivalent of “... up to two years ... of undergraduate study [i.e. in a college or university] in civil engineering from an accredited [college or university] in the United States. We do not understand the logic in the evaluator's reasoning. It is clear that a secondary school cannot be an institution of higher learning by definition, nor can a secondary schools curriculum be the equivalent of an accredited (i.e. college or university) institution in the United States.”⁴

CIS may, in its discretion, use as advisory opinions, statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In this instance, by petitioner's credential evaluators, the beneficiary has less than a four-year college degree. This matter is not in dispute.

⁴ An education credential evaluation submitted by the petitioner prepared by the by International Education Evaluators Services L.L.C., also opines that the Certificate of Study from Lviv Polytechnical Institute, Ukraine, in Architecture is the equivalent of two years of undergraduate study in from an accredited institution in the United States. We reject counsel's contention that architectural studies can be combined with civil engineering studies to equate to a degree in civil engineering.

The above regulations at 8 C.F.R. § 204.5(l)(3)(ii)(C) use a singular description of foreign equivalent degree. Thus, for professionals, 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. Here, counsel contends that a diploma and a certificate together equate to a Bachelor's of Science degree. We reject that contention.

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Counsel and the credentials evaluation service both contend that the beneficiary's professional experience and technical attainments demonstrate relate to the business nature of the petitioner's business services. There is no comparable provision to substitute 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. We do not find the determination of the credentials evaluation probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (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 because the degree did not require four years of study. *Matter of Shah*, at 245. While counsel argues that *Matter of Shah* is not controlling on the question of equivalent degrees, counsel also focuses on the fact that the case states that "usually" three year degrees are not the equivalent of four year degrees, and, counsel contends sometimes three year degrees can be the equivalent of four year degrees.

The AAO finds that when the case of *Matter of Shah* states that a bachelor's degree is "usually" requires four years of study, the exception to this rule is that it is possible to accumulate sufficient college credits, in for example college summer sessions, to complete a four year bachelor degree in less chronological time but with the same total credit hours as a four year bachelor's degree program requires in the United States. Regardless of the case of *Matter of Shah*, however, the Application for Alien Employment Certification as submitted by the petitioner, and as certified by the U.S. Department of Labor renders this point moot since the subject certified Alien Employment Application contains the requirement that the alien applicant, or any American worker who applied for the position, complete four years of college education. If the petitioner had intended to accept applicants with less than four years of college, it could have submitted the Form ETA 750 requiring three years of college and/or some degree less than a United States' bachelor degree. If the AAO were to agree with the petitioner that the alien is qualified, then it would be approving an alien with lesser qualifications than that set forth on the Form ETA 750. Clearly, this would be contrary to the plain language of the labor certification. During recruitment, the petitioner was able to reject qualified United States workers who did not possess four years of college or a United States bachelor degree. Allowing the petitioner to circumvent the clear and unequivocal language stated in the Form ETA 750 Part A would frustrate the purpose of the Application for Alien Employment Certification.

The petitioner failed to submit evidence 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.

