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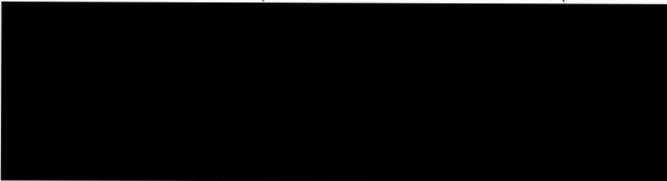
FILE: WAC 03 175 53048 Office: CALIFORNIA SERVICE CENTER Date: **JUL 18 2006**

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 previous counsel submitted a timely appeal to the record. The petitioner was subsequently bought out by [REDACTED] and [REDACTED] the petitioner, is a successor in interest to the predecessor petitioner.¹ New counsel for the successor in interest petitioner submitted a brief in September 2005. The appeal will be dismissed.

The petitioner is a software 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 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 petitioner applied and denied the position accordingly.

On appeal, new counsel submits a brief.

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.

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 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.

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:

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

¹ New counsel also submits a letter from [REDACTED] identified on the form G-28 as I-9/Visa Support, for [REDACTED] states that [REDACTED] completed its purchase of [REDACTED] on January 7, 2005 and renamed it [REDACTED]. [REDACTED] also states that [REDACTED] is the successor-in-interest to [REDACTED] and [REDACTED] and has assumed all immigration-related rights, duties, obligations, and assets of [REDACTED] and [REDACTED].

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 September August 16, 1999. The Form ETA 750 states that the proffered position requires a "Bachelor of Science" in computer science or related field and 1 year of experience in the job offered. In Section 15, it also states that the beneficiary's experience must include SQL and RDBMS.

With the petition, counsel submitted a report, dated June 25, 2000, from [REDACTED] Credentials Evaluator, Washington Evaluation Service, Washington, D.C. Dr. [REDACTED] stated that he evaluated the following documents: A bachelor of commerce (three year program) diploma with honors, from the University of Calcutta, India, dated 1988; a diploma in computer management, from 21st Century Computer Academy, India in 1990; a computer training certificate in Oracle 7.0 (Forms 4.5), and the beneficiary's work resume.

Dr. [REDACTED] in his evaluation stated that the beneficiary's bachelor's degree is "academically equivalent to a bachelor of science degree in business administration and a second major in computer science as awarded by an accredited U.S. university." Dr. [REDACTED] also stated that the beneficiary's combined computer studies were equivalent to a major in computer science as required by an accredited U.S. university. Dr. [REDACTED] then stated that according to INS guidelines, it takes one to two years of additional collegiate study to attain a bachelor's degree in another major and/or two to four years of relevant professional experience for equivalency in the requisite degree. Dr. [REDACTED] stated that based on these guidelines, the beneficiary had the equivalent to a second major in computer science as required by an accredited U.S. university.

Upon review of the documents, the diploma submitted to the record from the University of Calcutta indicates that the beneficiary's degree in commerce is a three-year study program. In addition the beneficiary's transcript from the University of Calcutta does not identify the specific courses taken by the beneficiary but provides acronyms such as "bmth" and "ACNH". No courses are specifically identified as computer courses. Furthermore, the certificate from 21st Century Computer Academy does not indicate whether this entity is part of an official college program, or that it represents a specific academic degree. It does list the following topics studied by the beneficiary during the one year program: Introduction to Computers and Basic Language, COBOL Languages, Personal Computer Software, Computers and Management Applications, Structure Analysis and Design, and Data Base Management Systems. The third document submitted with the educational evaluation document, is a certificate from Software Technology Group International Limited, that indicates the beneficiary completed a course in Oracle 7.0 in November 1995. This document does not indicate the length of the course or any affiliation to a college credit granting entity.

The petitioner also submitted letters from the beneficiary's three previous employers in the United States and India.

On September 15, 2004, the director sent the petitioner a notice of intent to deny the petition. The director noted that parts 14 and 15 of the Form ETA 750, required at a minimum a bachelor of science degree in computer science or a related field plus one year of experience.² The director stated that the record did not

² Under section 15, the Form ETA 750 also listed experience in SQL and RDBMS.

indicate, nor did the petitioner establish that the beneficiary possessed a baccalaureate degree “or related field of study” as stipulated in part 14 of Form ETA 750.³

In response to the NOID, former counsel stated that the director overlooked the foreign credentials evaluation submitted by Dr. ██████. Counsel stated that Dr. ██████ stated that the beneficiary’s bachelor degree was academically equivalent to a bachelor of science in business administration and a second major in computer science as awarded by an accredited U.S. university. Counsel further stated that three-year degrees are often considered equivalent to four-year degrees based on the more rigorous schedules associated with many three-year degree programs. Counsel also noted that the Form ETA 750A did not specifically state that the proffered position required a four-year bachelor’s degree. Counsel stated that the record indicated that bachelor of science degree in business administration with a second degree in computer science is the equivalent to the minimum qualifications for the proffered position. Counsel also noted that a degree in commerce or business administration would normally be considered a related field for the software engineering position. Counsel stated that the petitioner’s products are designed to help business systems and processes. Counsel noted that the job description for the position on the form ETA 750 specifically stated that the beneficiary would “design, develop, and debug...retail business software products...”

Counsel finally noted that even if the beneficiary’s degree was not considered equivalent to a bachelor of science in computer science or a related field, the beneficiary clearly met the requirement for the proffered position based on his extensive professional experience. Counsel stated that CIS would normally consider such work experience to be the equivalent to such a degree. Counsel noted that the beneficiary has over 15 years of professional experience in software engineering and programming, and has completed post-degree course work in computer management and Oracle 7. Counsel stated that within the H-1B context of three years of work equals one year of university studies, the beneficiary clearly possessed the equivalent of a bachelor’s degree.

On November 11, 2004, the director denied the petition. The director stated that 8 C.F.R. § 204.5(1)(2) specifically defined a professional as a “qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and is a member of the profession.” The director noted that in the instant petition, the labor certification clearly required that the job candidate have a bachelor’s degree with a major in computer science or a related field for the software engineer position. The director also noted that a bachelor’s degree is generally found to require four years of education and the rule that equates three years of relevant work experience to one year of education is applicable to non-immigrant H-1B petitions, and not to immigrant employment-based petitions. The director finally stated that CIS will not accept a degree equivalency or an unrelated degree when the Form ETA 750 expressly requires a candidate with a specific college degree within specific fields.

On appeal, former counsel stated that the director made an error in his decision. In the motion submitted to the record, new counsel states that the director’s decision is incorrectly based on the assertion that the Form ETA 750 requires a four-year bachelor’s degree. Counsel states that the ETA 750 requires a bachelor’s degree

³ Within the context of the petition adjudication, the director appeared to state that the beneficiary did not possess a baccalaureate degree in computer science or in a related field, as stipulated by Section 14 of the Form ETA 750.

in computer science or related field, and that the section of the application that notes the years of education required for the position was intentionally left blank. Counsel also states that had the petitioner wished to seek only applicants with four-year bachelor degrees, the petitioner would have put the number "4" in the relevant section. Counsel states that three-year bachelor's degrees from many universities are equivalent to four-year degrees due to the more rigorous schedules associated with some three-year degree programs. Counsel stated that the petitioner sought the greatest number of qualified applicants and kept the educational requirements broad. Counsel states that as CIS has pointed out, although most bachelor's degrees require four years of studies, counsel is not aware of anything that would prohibit an employer from requiring either a three-year or a four-year bachelor's degree in the EB3 immigrant petition context.

Counsel then notes Dr. [REDACTED] educational equivalency report and stated that a degree in commerce or business administration would normally be considered related to the petitioner's proffered position. Counsel states that the petitioner, as would many other similar companies involved in software development for business systems, would consider applications with degree in commerce or business administration for the petitioner. Counsel states that the beneficiary's degree in commerce should be considered a related field for purposes of the instant petition. Finally counsel states that the director's decision does not specifically address the petitioner's argument that the position does not require a four-year bachelor's degree.

Upon review of the record, counsel's and the petitioner's reliance on the credentials analysis/evaluation report submitted by Washington Evaluation Service is misplaced. As previously stated, Dr. [REDACTED] in his evaluation report stated that the beneficiary's bachelor's degree is academically equivalent to a bachelor of science degree in business administration and a second major in computer science as awarded by an accredited U.S. university. Dr. [REDACTED] stated that the beneficiary's combined computer studies were equivalent to a major in computer science as required by an accredited U.S. university. Dr. [REDACTED] stated that according to INS guidelines, it takes one to two years of additional collegiate study to attain a bachelor's degree in another major and/or two to four years of relevant professional experience for the equivalency to the requisite degree.

Dr. [REDACTED] provides no explanation for how he arrived at his evaluation with regard to the beneficiary's degree in commerce being academically equivalent to a bachelor of science degree in business administration and a second major in computer science. As previously stated, the diploma submitted to the record from the University of Calcutta indicates the beneficiary's degree in commerce is a three-year study program. In addition the beneficiary's transcript from the University of Calcutta does not identify the specific courses taken by the beneficiary but provides acronyms such as "bmth" and "ACNH" for them. The beneficiary's university transcripts do not reflect any coursework in computer science while studying at the University of Calcutta.

Again, the certificate from 21st Century Computer Academy does list the beneficiary's one year program of studies in computer management and software, among other topics. However, this certificate does not indicate that the academy is part of any university level degree program. The third document submitted with the educational evaluation document, is a certificate from the Software Technology Group International Limited, that indicates the beneficiary completed a course in Oracle 7.0 in November 1995. This document does not establish any further college level studies in computer studies by the beneficiary. Therefore, contrary to Dr. [REDACTED] evaluation, the record reflects three years of study in commerce, and one further year of non-university computer studies, and one certificate of training in an Oracle computer program. Dr. [REDACTED] assertion with

regard to a second major in computer science is not corroborated by the record. 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); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Furthermore, Dr. [REDACTED] in his evaluation appears to combine the beneficiary's academic studies with his work and further training to arrive at his equivalency report. This equivalency, however, applies to non-immigrant H1B petitions, not to immigrant petitions. See 8 CFR § 214.2(h)(4)(iii)(D)(5). Under the "degree" heading, the beneficiary is required to have a bachelor's degree or the equivalent on the Form ETA 750. The AAO acknowledges that the regulations of H-1B petitions allow for the consideration of the beneficiary's combined education and work experience, when evaluating the beneficiary's qualifications for a specialty occupation. Nevertheless, since the Form ETA 750 submitted with the instant petition requires a baccalaureate degree or equivalent, the petitioner must establish that the beneficiary possesses a baccalaureate degree in the field of computer science or a related field. In the instant petition, Dr. [REDACTED] credentials evaluation is given no weight.

In its response to the director's notice of intent to deny the petition, and on appeal, counsel has noted that three-year bachelor's degrees from many universities are equivalent to four year degrees due to the more rigorous schedule associate with some three-year degree programs. However, neither the petitioner nor counsel provides any further evidentiary documentation that the beneficiary's three year program in commerce is the equivalent of a four-year program based on the rigorous nature of required studies, or that the beneficiary accomplished the equivalent number of courses obtained in a four year course of studies while attending the University of Calcutta for three years. A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

Finally, while the beneficiary's bachelor's degree in commerce from the University of Calcutta could contain coursework that could be considered related to the coursework for a bachelor degree in computer studies, the petitioner does not provide any further explanation of the coursework undertaken by the beneficiary during his three years of study in commerce. Thus, while counsel's statements with regard to the relationship between business administration, commerce, computer studies, and the petitioner's business activities appear reasonable, the record does not reflect sufficient evidence to establish that the petitioner's three year university program contain any college level studies in computer science as it related to business.

CIS must ascertain whether the alien is, in fact, qualified for the certified job. 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, a bachelor of science degree (four years in college) in computer studies or a related field, 1 year of work experience, and experience in SQL and RDBMS.

The petitioner has established that the beneficiary has more than one year of experience in the job offered. The issue of the beneficiary's work experience is not in question. It is also noted that the beneficiary's resume indicates four years of experience with Techna, Calcutta, India using RDBMS and SQL, and that there is no dispute on these parts of the Form ETA 750. The only issue to be discussed in the remainder of this decision is whether or not the beneficiary has a bachelor's degree or its equivalent in computer science or a related field.

The petitioner is obliged to demonstrate that the beneficiary has a U.S. bachelor's of science degree in computer science or a related field, or a foreign degree which is the equivalent of such a U.S. bachelor's degree. As previously stated, a bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Because the record does not indicate that the beneficiary has a U.S. degree, the remaining issue is whether the beneficiary has a foreign degree that is equivalent.

The record only reflects college level studies in commerce at the University of Calcutta for a period of three years. Furthermore the petitioner has not established that the beneficiary's three year course of studies is necessarily in computer studies or a related field. Thus, the petitioner has not demonstrated that the beneficiary has a U.S. bachelor's degree or an equivalent foreign degree and has not, therefore, demonstrated that the beneficiary is qualified for the proffered position according to the terms of the Form ETA 750 labor certification.

The beneficiary's college education as documented by the evidence submitted to the record, falls short of four years of undergraduate studies. Counsel's assertion that the petitioner left the number of years blank so as to procure the broadest field of candidates is viewed as somewhat disingenuous, as the Form ETA 750 clearly states that a bachelor's degree is required. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor initially, or a new Form ETA 750 could have been submitted to accompany the immigrant employment-based petition. For example, an ETA 750 requiring three years of college studies and no degree could have been the petitioner's requirements. Since that was not done, and the Form ETA 750 submitted with the I-140 petition clearly indicates that the position requires a baccalaureate degree in science in either computer studies or a related field, the director's decision to deny the petition must be affirmed.

In this case, contrary to counsel's assertions, 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. As stated previously, precedent law does exist that examines the nature of a degree equivalent to 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. Furthermore, *Shah* applies regardless of whether or not the petition was filed as a skilled worker or professional.

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. Furthermore, the evaluation submitted with the evidence in this proceeding suggesting that the beneficiary's three year degree in commerce, and his subsequent employment experience and training 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. As stated previously, this credentials evaluation is given no weight in these proceedings. 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.

Furthermore, contrary to counsel's assertions, If CIS were to allow the petitioner to ignore specific terms on the Form ETA 750, as in this case, a degree requirement, 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.

The AAO concurs with the director's decision that the petitioner has not established that the beneficiary is qualified for the proffered position, 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.