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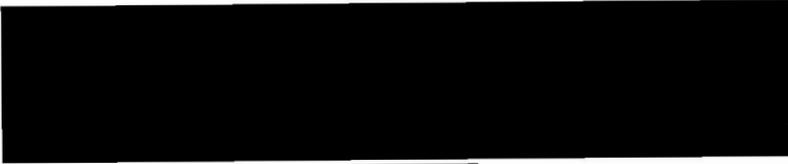
U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
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FILE:



EAC-04-114-50756

Office: VERMONT SERVICE CENTER

Date: **MAY 19 2006**

IN RE:

Petitioner:

Beneficiary:



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: SELF-REPRESENTED

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

The petitioner is a computer software engineering and systems development company. It seeks to employ the beneficiary permanently in the United States as a Programmer Analyst – SAP Specialist. 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 a bachelor's degree as 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, at the time of petitioning for classification under this paragraph, are professionals.

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 Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. 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 September 29, 1999. The ETA 750 was certified by the Department of Labor on January 13, 2000.

The instant petition is for a substituted beneficiary. An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memo. from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, *Substitution of Labor Certification Beneficiaries*, at 3, [http://ows.doleta.gov/dmstree/fm/fm96/fm\\_28-96a.pdf](http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf) (March 7, 1996).

The I-140 petition was submitted on March 8, 2004. On the petition, the petitioner claimed to have been established in 1986, to currently have 3,900 employees, to have a gross annual income of \$292,648,000.00, and to have a net annual income of -\$27,491,000.00. With the petition, the petitioner submitted a Form ETA 750B with information pertaining to the qualifications of the new beneficiary. On the Form ETA 750B, signed by the beneficiary on March 1, 2004, the beneficiary did not claim to have worked for the petitioner.

In a decision dated October 12, 2004 the director determined that the evidence failed to establish that the beneficiary held a bachelor's degree as required by the ETA 750. The director therefore denied the petition.

On appeal, the petitioner submits no brief and no additional evidence. The petitioner also submits a copy of a letter dated January 7, 2003 from [REDACTED] Director, Business and Trade Services, Office of Adjudications, Immigration and Naturalization Service (now CIS). That letter is submitted as legal authority, and is not an evidentiary document.

The petitioner states on appeal that the director erred in stating that the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(c) does not permit the combining of degrees in order to achieve a foreign degree equivalent. The petitioner states that the January 7, 2003 letter from [REDACTED] states that degrees can be combined. The petitioner also states that even if the beneficiary does not satisfy the standard for a professional, he does satisfy the standard for a skilled worker.

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) or 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.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, 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, blocks 14 and 15, sets forth the minimum education, training and experience that an applicant must have for the position of Programmer Analyst – SAP Specialist. On the ETA 750A submitted with the instant petition, blocks 14 and 15 describe the requirements of the offered position as follows:

- 14. Education (number of years)
  - Grade School 8
  - High School 4
  - College 3-4
  - College Degree Required Bachelor’s Degree\*
  - Major Field of Study **Comp. Sci-Math/Engrg/Science**
  
- Training
  - No. Yrs [blank]
  - No. Mos [blank]
  - Type of Training Business - Commerce
  
- Experience
  - Job Offered Yrs 1
  - Related Occupation Yrs 1
  - Related Occupation (specify) Software Engineer/Systems Analyst
  
- 15. Other Special Requirements
  - A) Modules: FI (Financial Accounting), CO (Controlling), AM (Fixed Assed Management), SD (Sales and Distribution), MM (Materials Management), PP (Production Planning), QM (Quality Management), PM (Plant Maintenance), HR (Human Resources), PS (Project System), WF (Workflow), IS (Industry Solutions), BS (Basis Architecture).
  - B) SAP tools: ABAP/4, Screen Painter, Menu Painter, SAP Script, Correction/Transport, Data Dictionary, Function Modules, User-Exit Routines, SAP Installation.

Qualifying Criteria: 1 of A and 2 of B; or 2 of A and 1 of B; or 2 of A; or 2 of B; and high mobility preferred.

\* (or equivalent)

The beneficiary states his or her qualifications on Form ETA 750B. On the ETA 750B submitted with the instant petition, in block 11, for information on the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), the beneficiary states the following:

<u>Schools, Colleges and Universities, etc.</u>	<u>Field of Study</u>	<u>From</u>	<u>To</u>	<u>Degrees or Certificates Received</u>
Indian Institute of Management, Ahmedabad, India	Management-Finance	Jul 1985	Feb 1987	P.G. Diploma in Management
Institute of Chartered Accountants of India New Delhi, India	Accounting	Sep 1983	May 1988	Associate Member of the Institute of Chartered Accountants of India
Osmania University Hyderabad, India	Economics, Mathematics and Statistics	Sep 1981	Apr 1983	Bachelor of Science

[remaining blocks blank]

The record contains a copy of an evaluation of the beneficiary's education and experience dated September 28, 2001 by Educational Assessment, Inc., which finds that the beneficiary's education is equivalent to a Bachelor of Business Administration degree in Accounting and Business Management from an accredited university in the United States. The evaluation uses a combination of education from different institutions as the basis for finding that the beneficiary has a foreign degree equivalent to a United States bachelor's degree. Supporting the evaluation are copies of documents of the beneficiary from Osmania University and from the Indian Institute of Management.

The record contains no documents of the beneficiary from the Institute of Chartered Accountants of India. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The evidence in the record shows that the beneficiary earned a three-year degree from Osmania University and a Post-Graduate Diploma in Management from the Indian Institute of Management. However, the evidence does not show that the beneficiary's degree from Osmania University is the equivalent to a United States bachelor's degree.

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 that evidence, or may give less weight to it. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The only regulation specifying the equivalent of a bachelor's degree in the context of immigrant petitions is one which pertains to professionals. The regulation at 8 C.F.R. § 204.5(1)(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.

*Skilled worker* means an alien who is capable, at the time of petitioning for this classification, 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. Relevant post-secondary education may be considered as training for the purposes of this provision.

Concerning the evidence needed to support classification in the above preference categories, the regulation at 8 C.F.R. § 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.

(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 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.

In the definition of “professional,” the regulation at 8 C.F.R. § 204.5(l)(2) uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must have 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.

With regard to the preference category applicable to the instant petition, the instant petition was submitted with a mark in check box letter “e,” for “A skilled worker (requiring at least two years of specialized training or experience) or professional.” (See Form I-140). The Form I-140, Part 2, Petition Type, does not distinguish between skilled workers and professionals, for a single check box, letter “e,” applies both to skilled workers and to professionals. (See Form I-140 Immigrant Petition for Alien Worker, Part 2, Petition Type).

Concerning petitions for skilled workers, no provision of the regulations specifies the equivalent of a bachelor’s degree. Therefore if the petition is evaluated as one for a skilled worker, the petition would thereby lack any criteria in the regulations to evaluate what is to be considered equivalent to a bachelor’s degree. The petitioner was free to specify on the Form ETA 750 the qualifications that it would accept as equivalent to a bachelor of science degree, but the petitioner did not do so.

The evaluation report in the record makes no finding that the beneficiary holds any foreign degree which is equivalent to a U.S. bachelor’s degree. Regardless of whether the petition sought classification of the beneficiary

as a skilled worker or as a professional, the beneficiary had to meet all of the requirements stated by the petitioner in blocks 14 and 15 of the labor certification as of the day it was filed with the Department of Labor.

The petitioner submits as an attachment to the petitioner's brief a copy of a letter to a lawyer who is not a representative in the instant case dated January 4, 2003 from [REDACTED] Director, Business and Trade Services, Office of Adjudications, Immigration and Naturalization Service (now CIS). In the letter, Mr. [REDACTED] states concerning 8 C.F.R. § 204.5(k)(2) that it is not the intent of the regulations that a "foreign equivalent degree" be only a single foreign degree and that if a "proper credentials evaluations service finds that the foreign degree or degrees are the equivalent of the required US degree, then the requirement may be met."

Letters and correspondence issued by the Office of Adjudications are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although a letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer's analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

In her decision, the director found that the beneficiary had a three-year bachelor's degree and three other educational certificates. The director found that the regulations do not allow for the combining of a degree with other post-secondary courses, training or experience in order to achieve a foreign degree equivalent. The director therefore found that the evidence did not establish that the beneficiary possessed the specifically required education as stated on the Form ETA 750A as of September 29, 1999. The director therefore denied the petition. The decision of the director was correct.

The issue is whether the beneficiary met all of the requirements stated by the petitioner in blocks 14 and 15 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary had a bachelor's degree in Computer Science, Mathematics, Engineering, or Science on September 29, 1999. 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.