

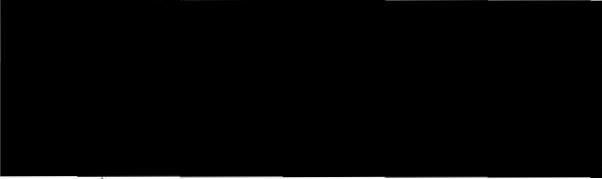
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FILE: LIN-03-230-51359 Office: NEBRASKA SERVICE CENTER Date: SEP 29 2006

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:



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, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a health care facility for handicapped children. It seeks to employ the beneficiary permanently in the United States as a “Developmental Disability Specialist (DOT: 195.227-018; OES 21-1093).” 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 the training required to qualify as a skilled worker in the occupation of developmental disability specialist, 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.

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 (Comm. 1977). 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 October 22, 2002.

The I-140 petition was submitted on July 28, 2003. On the petition, in Part 2, Petition type, the petitioner checked box “e” for “a skilled worker (requiring at least two years of specialized training or experience) or professional.” (I-140 petition, Part 2). In Part 5 of the petition, Additional information about the petitioner, the petitioner claimed to have been established in 1975, to currently have 140 employees, to have a gross annual income of “+\$20 Million,” and to have a net annual income of “+\$889,000.” (I-140 petition, Part 5). With the petition, the petitioner submitted supporting evidence.

In a November 16, 2004 decision, the director determined that the evidence failed to establish that the beneficiary’s possessed two years of post-secondary education relevant to the position of developmental disability specialist. The director therefore found that the beneficiary did not meet the regulatory definition of skilled worker, and denied the petition.

On appeal, counsel submits a brief and no additional evidence. Counsel also submits copies of three AAO decisions in petitions submitted previously by the petitioner which had been certified by the director to the AAO. Those decisions are not evidentiary documents, but are submitted as legal authority in support of the instant appeal.

Counsel states on appeal that the beneficiary’s post-secondary education is a Bachelor’s degree in Pharmacy. Counsel states that a degree in Pharmacy is relevant to the offered position under the standards of previous AAO decisions in petitions submitted by the petitioner. Counsel then quotes extensively from the language of the AAO decision in one of those petitions.

The AAO reviews appeals on a *de novo* basis. *See Dorr v. I.N.S.* 891 F.2d 997, 1002, n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including any new evidence properly submitted on appeal.

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 developmental disability specialist. On the ETA 750A submitted with the instant petition, blocks 14 and 15 describe the requirements of the offered position as follows:

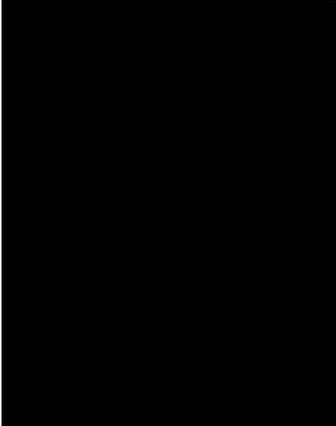
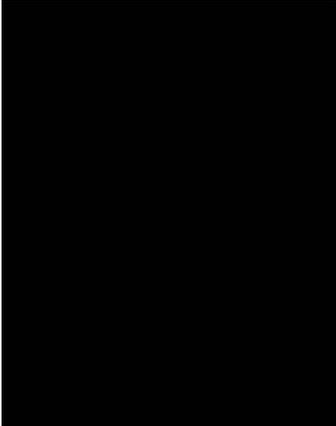
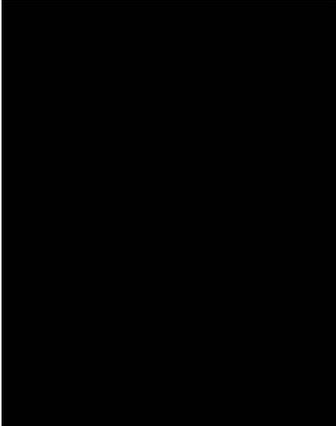
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|-----|------------------------------|-----|--|
| 14. | Education (number of years) | | |
| | Grade School | | 8 |
| | High School | | 4 |
| | College | | 4 |
| | College Degree Required | | Bachelor's** |
| | Major Field of Study | | Any field |
| | Training - yrs | | n/a |
| | Experience | | |
| | Job Offered | Yrs | 0 |
| | Related Occupation | Yrs | 0 |
| | Related Occupation (specify) | | None |
| 15. | Other Special Requirements | | ** Bachelor's/ Foreign Equivalent/ Credential Evaluation which shows a combination of education, training and or work experience equivalency |

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:

Schools, Colleges and Universities, etc.	Field of Study	From	To	Degrees or Certificates Received
[REDACTED]	Pharmacy	06/1978	04/1983	B.S. in Pharmacy

[remaining rows blank]

On the ETA 750B submitted with the instant petition, in block 15, for information on the beneficiary's work experience the beneficiary states the following:

Name and Address of Employer	Name of Job	From	To	Kind of Business
	Staff Pharmacist	04/2001	Present	Medical Hospital
	Assistant Instructor II	06/2000	03/2001	School
	Staff Pharmacist	12/1990	09/1997	Medical Hospital

The regulation at 8 C.F.R. § 204.5(l)(2) states in pertinent part:

Definitions. As used in this part:

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.

Copies of three AAO decisions submitted on appeal discuss the portion of the regulatory definition of skilled worker which states, "Relevant post-secondary education may be considered as training for the purposes of this provision." 8 C.F.R. § 204.5(l)(2). Each of those decision was issued on July 9, 2004. In those decisions, the AAO discusses the meaning of the word "relevant" in the foregoing definition and states, "for a beneficiary's post secondary education to be considered it must be logically related and have appreciable probative value as to the capacity of the beneficiary to perform the job duties on the basis of the educational qualifications alone." (AAO decision in LIN-03-110-55083, at 6). The AAO's reasoning was based on the definition of the term "relevant" found in Black's Law Dictionary, a definition which appears to address the meaning of that term as it relates to evidentiary questions. (AAO decision in LIN-03-110-55083, at 6, quoting Black's Law Dictionary 1293 (7th ed. 1999)).

None of the three cases submitted by the petitioner has been published as a precedent case. While 8 C.F.R. § 103.3(c) provides that precedent decisions of CIS are binding on all its employees in the administration of the Act, unpublished decisions are not similarly binding. Precedent decisions must be designated and published in bound volumes or as interim decisions. 8 C.F.R. § 103.9(a). Nonetheless, the analysis in the three decisions submitted by the petitioner of the skilled worker definition in the regulation at 8 C.F.R. § 204.5(l)(2) is reasonable.

Two of the decisions state that study “in various fields of health care” would be sufficient to qualify as relevant post-secondary education for the position of developmental disability specialist. (AAO decisions in LIN-03-067-51563, at 8, and in LIN-03-110-55083, at 8). The other AAO decision finds that the beneficiary’s education in the field of medicine is sufficient for that occupation. (AAO decision in LIN-03-072-51157, at 7). The latter decision also states the following:

The AAO is not suggesting that a post-secondary education other than a medical degree is not relevant as a number of other fields would have a substantial connection to the duties of a Developmental Disability Specialist as set forth in the ETA 750. Among the post secondary education likely to have such a connection would be areas of study involving teaching, various fields of health care, occupational training, or therapy.

(AAO decision in LIN-03-072-51157, at 8, fn. 5).

In the instant I-140 petition, the ETA 750 specifies the following duties for the position of developmental disability specialist:

To develop and implement a continuous active treatment program for each profoundly mentally and physically handicapped resident to enable each individual to function as independently as possible and prevent skill regression. Observe, instruct and play with resident and confer with professionals and parents to obtain information relating to child’s mental and physical development. Develop individual teaching plan covering self-help, motor, social, cognitive and language skills development. Revises teaching plan to correspond with child’s rate of development. Consults and coordinates plans with other professionals.

(ETA 750, Part A, block 13).

In his November 16, 2004 decision, the director determined that the evidence failed to establish that the beneficiary possessed two years of post-secondary education relevant to the position of developmental disability specialist. The director therefore found that the beneficiary did not meet the regulatory definition of skilled worker, and denied the petition.

Based on the evidence in the record, the director’s decision to deny the petition was correct.

The record contains a copy a course transcript of the beneficiary issued by St. Louis College, Tuguegarao, Cagayan, Philippines, showing four semesters of study in a liberal arts program during the 1976-77 and 1977-78 academic years. The record also contains a copy of a course transcript from Manila Central University, Manila, Philippines, showing the beneficiary’s transfer to that university beginning with the second semester of the 1980-81 academic year. The record also contains a copy of a diploma dated April 10, 1983 from Manila Central University, Manila, Philippines, granting the beneficiary a Bachelor of Science in Pharmacy.

The record also contains a copy of an academic evaluation for the beneficiary by Morningside Evaluations and Consulting, New York, New York dated July 21, 2003.

The beneficiary’s course transcript from St. Louis College shows no courses in education or health care. The transcript shows courses in the Psyche of the Person, General Inorganic Chemistry, General Zoology, General Sociology, and Introduction to Biological Science which could be shown to be at least indirectly relevant to the position of developmental disability specialist. The beneficiary’s course transcript from Manila Central

University shows four higher-level specialized courses in chemistry, as well as courses in Pharmacology and Toxicology. The titles of those courses indicate that they are too specialized to be considered as relevant to the position of developmental disability specialist. The only course at Manila Central University which could be indirectly relevant to the offered position of developmental disability specialist is a course in Physiology with Family Planning.

The two transcripts in the record therefore show a total of six courses which have some relevance to the offered position, with no courses in education or health care. The transcripts indicate that a normal course load for one semester is about five courses. Therefore the six courses relevant to the offered position are equal to a little more than one semester of study. Those courses therefore fail to satisfy the regulatory requirement for two years of relevant post-secondary education.

The academic evaluation by Morningside Evaluations and Consulting finds that the beneficiary's degree from Manila Central University is equivalent to a Bachelor of Science in Pharmacy from an accredited institution of higher education in the United States.

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 the instant petition, the academic evaluation by Morningside Evaluations and Consulting is a reasonable analysis of the beneficiary's academic qualifications. However, the field of Pharmacy cannot be considered to be sufficiently relevant to the position of developmental disability specialist to qualify as training for that position. Although pharmacists provide essential services to the health care professions, pharmacists are not themselves health care providers, nor are they responsible for prescribing medications for patients.

In her brief, counsel states, "Pharmacy is one of the degrees one could obtain to pursue a health care related degree and most valuable to [the petitioner] in caring for their severely and profoundly handicapped children." (Brief, December 8, 2004, at 2). Counsel's assertion in effect concedes that a pharmacy degree is not itself a health care related degree, but is rather a degree which could prepare a person to pursue a degree in the health care field.

The academic evaluation finding that the beneficiary's degree is the equivalent to a Bachelor of Science in Pharmacy in the United States therefore fails to establish that the beneficiary has two years of post-secondary education relevant to the offered position.

The record also contains an undated copy of a professional resume of the beneficiary. In addition to the education discussed above, the resume states studies of the beneficiary from 1998 to 2000 toward a Master of Science in Pharmacy at Philippine Women's University, Manila City, Philippines. The resume states that 30 credits were earned during those studies.

The professional resume fails to comply with the evidentiary requirements of the regulation at 8 C.F.R. § 204.5(g)(1). 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)).

As noted above, 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 (Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm.

1971). The evidence in the record fails to establish that the beneficiary had at least two years of post-secondary education which was relevant to the position of developmental disability specialist as of the priority date.

For the foregoing reasons, the assertions of counsel on appeal fail to overcome the decision of the director concerning the education of the beneficiary.

In summary, the evidence fails to establish that the beneficiary had at least two years of post-secondary education relevant to the offered position, as required by the definition of skilled worker in the regulation at 8 C.F.R. § 204.5(1)(2).

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.