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U.S. Citizenship
and Immigration
Services

B6

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FILE: LIN-04-090-51617 Office: NEBRASKA SERVICE CENTER Date: JAN 18

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, Nebraska 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 "Disability Recreational Therapist (DOT: OES [REDACTED])" A photocopy of a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. No original ETA 750 is found in the record. The director determined that the petitioner had not established that the beneficiary had the training required to qualify as a skilled worker for the offered position, 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 June 10, 2003.

The I-140 petition was submitted on February 11, 2004. 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 September 16, 2004 decision, the director determined that the offered position requires the services of a skilled worker and that the beneficiary lacked two years of education or training relevant to the offered position. The director accordingly denied the petition.

On appeal, counsel submits a brief and submits 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 includes a Bachelor's degree in Sociology, a field which counsel states has been found relevant to the position indicated in this petition by previous decisions of the AAO.

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, Citizenship and Immigration Services (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 Disability Recreational Therapist. 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 | 2 |
| | College Degree Required | Associates Degree** |
| | 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 | None |
- ** U.S. Assoc Degree -or- Foreign Academic Equivalent -or- Employer will accept a combination of education and/or work experience in lieu of formal education that has been evaluated to be equivalent to a U.S. Assoc degree.

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>
██████████ New York, NY	Credential Evaluation	06/2003		US Equiv Associate Degree
University of Yaounde Yaounde, Cameroon	Sociology	/1999	/2001	3 yr Bachelor's Sociology

[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:

<u>Name and Address of Employer</u>	<u>Name of Job</u>	<u>From</u>	<u>To</u>	<u>Kind of Business</u>
Self Employed Yaounde, Cameroon	Home Health Care Giver	2001	2002	Home Health Care
A ██████████ Sari, Cameroon	Sales Agent	2001	2002	Car and Auto Parts

[remaining row blank]

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 decisions 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 Disability Recreational Therapist:

Organize and direct medically approved recreation program for patients in pediatric mental retardation facility. Direct and organize activities to implement a continuous active treatment program for mentally and physically handicapped resident children to enable each individual to function as independently as possible and prevent skill regression. Regulate content of programs in accordance with patients’ capabilities, needs and interests. Prepare progress charts and periodic reports to keep other members of the treatment staff fully apprized of patients developmental history.

(ETA 750, Part A, block 13).

In a September 16, 2004 decision, the director determined that the offered position requires the services of a skilled worker and that the petitioner had not established that the beneficiary had the training required to qualify as a skilled worker for the offered position, and denied the petition accordingly.

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

The job duties described in the ETA 750 for the position of Disability Recreational Therapist are those of a skilled worker. The ETA 750 was certified by the Department of Labor with those job duties. The Department of Labor’s job title for the occupation is “Recreational Therapist.” The public Internet Web site of the Occupational Information Network contains information developed in coordination with the U.S. Department of Labor. The summary report for the job category “29-1125.00 – Recreational Therapists” classifies this job category as “Job Zone Four: Considerable Preparation Needed.” The report states the following requirements for overall experience: “A minimum of two to four years of work-related skill, knowledge, or experience is needed for these

occupations.” The report states the following requirements for job training: “Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.” The report states a Specific Vocational Preparation (SVP) Range of “7.0 to <8.0.” Occupational Information Network, *O*Net OnLine, Summary Report for : 29-1125.00 – Recreational Therapists*, <http://online.onetcenter.org/link/summary/29-1125.00> (accessed November 21, 2006). The minimum SVP of 7.0 is the same as that for the position of developmental disability specialist, which is discussed above in the decision of the AAO in LIN-03-110-55083, which states that an SVP of 7 corresponds to a job which requires from two to four years of experience. (AAO decision in LIN-03-110-55083, at 10).

The offered position in the instant petition is not developmental disability specialist, but rather disability recreational therapist. Nonetheless, the job duties for the two positions contain many similarities. The position of developmental disability specialist includes the following duties, among others: “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.” (AAO decision in LIN-03-110-55083, at 5, *quoting* ETA 750 in that petition). The position of disability recreational therapist includes the following duties, among others: “Organize and direct medically approved recreation program for patients in pediatric mental retardation facility. Direct and organize activities to implement a continuous active treatment program for mentally and physically handicapped resident children to enable each individual to function as independently as possible and prevent skill regression.” (ETA 750 in the instant petition, block 13.)

The record contains a copy of a diploma dated March 21, 1996 from the University of Yaounde, Cameroon, granting the beneficiary a Bachelor’s Degree in Sociology, with an accompanying course transcript.

The record also contains a copy of an academic evaluation for the beneficiary by [REDACTED] and Consulting, New York, New York dated June 3, 2003.

The beneficiary’s course transcript from University of Yaounde shows few courses which are relevant to the position of Disability Recreational Therapist. The transcript shows courses in Sociology and Personality, Sociology of Deviant and Delinquency, and Social Psychology. Those course are only indirectly relevant to the offered position, since the focus of those courses is on society, rather than on the individual, nor do those courses focus on health care, teaching, occupational training or therapy. The transcript also shows other course in Sociology as well as general education courses.

The academic evaluation by [REDACTED] and Consulting finds that the beneficiary’s degree from University of Yaounde is equivalent to a Bachelor of Arts in Sociology degree 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 [REDACTED] and Consulting is found not to be a reasonable analysis of the beneficiary’s academic qualifications. The beneficiary’s course transcript show study for only three academic years. A Bachelor’s degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Nothing in the academic evaluation addresses the fact that the beneficiary’s course transcript shows only three academic years of study. The ETA 750 requires only an Associate’s degree. However, it cannot be presumed that a three-year Bachelor’s degree from the University of Yaounde is equivalent to an Associate’s degree from an accredited institution

of higher education in the United States. The record contains no academic evaluation which makes any finding pertaining to an Associate's degree.

Counsel asserts that the field of Sociology is a field which has been found relevant to the position indicated in this petition by previous decisions of the AAO. Counsel states the following:

The AAO in its Decisions went as far as to list field which would be clearly relevant post-secondary education for [the petitioner's] positions and included "teaching" as such a field. Sociology is one of the degrees one could obtain to pursue teaching and most valuable to [the petitioner] in caring for their severely and profoundly handicapped children.

(Brief, at Page 2).

Counsel is correct in stating that teaching is one of the areas of study mentioned in previous decisions of the AAO as relevant to the position of Developmental Disability Specialist. That analysis would also be applicable to the position in the instant petition of Disability Recreational Therapist, for the reasons discussed above. However, Sociology is not an area of study related to teaching. Counsel's assertion that Sociology is one of the degrees which a person could obtain to pursue teaching fails to address the fact that degrees in teaching require specialized courses in educational methods. Although Sociology might be among the subjects taught in school, a degree in Sociology is not itself a degree in teaching, known more formally as a degree in the field of Education.

For the foregoing reasons, the field of Sociology is not sufficiently relevant to the position of Disability Recreational Therapist specialist to qualify as training for that position.

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).

In his decision, the director evaluated the qualifications of the beneficiary and found that those qualifications failed to establish that the beneficiary was a skilled worker qualified for the offered position of disability recreational therapist. The analysis of the director on issues concerning qualifications for a skilled worker position was correct, because the regulations require that education must be relevant to the duties of the offered position where the petition is for a skilled worker. The assertions of counsel on appeal fail to overcome the decision of the director.

Beyond the decision of the director, the record in the instant petition lacks sufficient evidence of the petitioner's ability to pay the proffered wage. The record in the instant case contains copies of audited financial statements. Audited financial statements are among the forms of acceptable evidence stated in the regulation at 8 C.F.R. § 204.5(g)(2). The audited financial statements in the record are combined statements of the petitioner and of another corporation, ██████████ Inc. Notes to the audit report accompanying the statements state that both corporations are among eight subordinate obligated group companies of ██████████ Group and that members of the board of directors of ██████████ Group also serve on the boards of directors of the subordinate obligated entities, in some cases with other individuals.

The combined financial statements of the petitioner and of ██████████ Inc. are for the years ended June 30, 2001 and June 30, 2002. The audit report accompanying the financial statements is dated September 17, 2002. The instant petition was filed on February 11, 2004. If the audit report for the year ending June 30, 2003 was

prepared in a similar manner as that for the previous year, it should have been available in September 2003. Nothing in the record explains the absence of an audit report for the year ending June 30, 2003. The record contains no other evidence of the petitioner's ability to pay the proffered wage which complies with the evidentiary requirements of the regulation at 8 C.F.R. § 204.5(g)(2). Therefore the evidence in the record fails to establish the petitioner's ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent resident status.

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.