

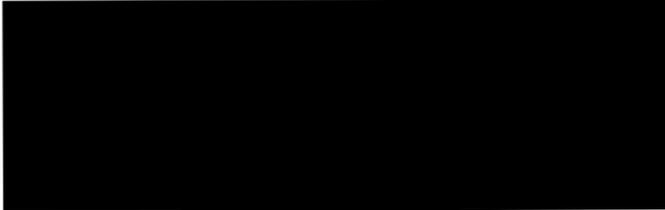
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FILE:

SRC 05 198 51830

Office: TEXAS SERVICE CENTER

Date: JUL 19 2007

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.

A handwritten signature in black ink, appearing to read "Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a door manufacturing company. It seeks to employ the beneficiary permanently in the United States as an accountant. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary has the requisite education as required by the certified Alien Employment Application, specifically a Bachelor's Degree in accounting or its foreign degree equivalent.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's October 14, 2005 denial, an issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified based upon her education attainments. The director determined that the petitioner could not combine the beneficiary's completion of a three-year baccalaureate program from the University of Mumbai, Mumbai, India, majoring in accounting, with work experience to demonstrate that the beneficiary has a foreign equivalent degree to a United States baccalaureate degree.

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 the following:

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 that the minimum of a baccalaureate degree is required for entry into the occupation.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the Form ETA 750 was accepted on May 16, 2000.¹ The proffered wage as stated on the Form ETA 750 is \$53,331.00 per year. The Form ETA 750 states that the position requires a Bachelor's Degree in

¹ It has been approximately seven years since the Alien Employment Application has been accepted and the proffered wage established. According to the employer certification that is part of the application, ETA Form 750 Part A, Section 23 b., states “The wage offered equals or exceeds the prevailing wage and I [the

Accounting and four years of experience in the job offered or four years of experience as an assistant accountant.

The proffered position requires a bachelor's degree and four years of experience. Because of those requirements, the proffered position is for a professional. DOL assigned the occupational code of 13-2011.01, accountants, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/crosswalk/DOT?s=030.162-014+&g+Go> (accessed July 15, 2007) and its extensive description of the position and requirements for the position most analogous to the petitioner's proffered position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to the proffered position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." See <http://online.onetcenter.org/link/summary/15-1031.00#JobZone> (accessed December 12, 2006). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

The proffered position may be properly analyzed as professional since the position requires a bachelor's degree and four years of experience, which is required by 8 C.F.R. § 204.5(I)(3)(ii)(C) and DOL's classification and assignment of educational and experiential requirements for the occupation. The professional category is the most appropriate category for the proffered position based on its educational and experience requirements.

Counsel submitted copies of the following documents that are relevant to the issue of the beneficiary's qualifications: the original Form ETA 750, Application for Alien Employment Certification, approved by the U.S. Department of Labor; a letter from the petitioner dated June 17, 2005; and, a job reference letter from Regal Developers, Mumbai, India, that is notarized as attested May 6, 1999.

The director issued a request for evidence on August 30, 2005, consistent with the regulation 8 C.F.R. § 204.5(I)(3)(ii)(C). The director requested evidence that the beneficiary has a United States Bachelor's Degree in accounting, or a foreign educational equivalent.

In response, as evidence, counsel submitted a letter dated September 20, 2005; an academic evaluation prepared by the Spantran Services Educational Consultants dated July 14, 1999, four pages of courses taken and grades received by the beneficiary from the Maharashtra State Board of Secondary and Higher Secondary Education; a diploma from the University of Mumbai, Mumbai, India dated December 12, 1997 stating that the beneficiary received a Bachelor of Commerce Degree (Three-Year Integrated Course) with the subject of

employer] guarantee that, if a labor certification is granted, the wage paid to the alien when the alien begins work will equal or exceed the prevailing wage which is applicable at the time the alien begins work."

Financial Accounting and Auditing (special). Along with the university degree, counsel submitted the beneficiary's marks summary sheet showing the marks obtained during her three year university education experience.

Further, counsel had submitted copies of the following documents: a diploma from the I.B. Patel School of Computer Studies, I.B. Patel Independent School District, India, stating that the beneficiary received and completed instruction in computer software programming from January 5, 1991 to January 30, 1994; a certificate presented by the Indo-American Society to the beneficiary stating that she completed a course on markets, products and methods during April-May 1995; a job reference letter notarized as attested May 15, 1995, from [REDACTED] Mumbai, India stating that the beneficiary was employed as a "Manager-Computer Accounting Systems" from February 1, 1993 to December 15, 1993; and, a job reference letter from Regal Developers, Mumbai, India that was notarized as attested May 6, 1999, that stated the beneficiary was employed as "Senior Accountant" from January 8, 1994 to July 28, 1998.

The director denied the petition on October 14, 2005, finding that the evidence submitted did not establish that the beneficiary has the requisite education as required by the certified Alien Employment Application.

Counsel submitted a Form I-290B appeal in this matter dated November 18, 2005. Counsel makes no appeal statement.

As additional evidence on appeal, counsel submits the following additional evidence: a credential evaluation dated November 4, 2005, from Global Education Group, Inc. of Miami Beach, Florida; and, an "advisory opinion" dated November 4, 2005, from Global Education Group, Inc. of Miami Beach, Florida

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal².

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and 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).³

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

³ The Department of Labor ("DOL") must certify that insufficient domestic workers are available to perform the job and that the alien's performance of the job will not adversely affect the wages and working conditions of similarly employed domestic workers. *Id.* § 212(a)(14), 8 U.S.C. § 1182(a)(14). The INS [now CIS] then makes its own determination of the alien's entitlement to sixth preference status. *Id.* § 204(b), 8 U.S.C. § 1154(b). *See generally K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir.1983). *See also Castaneda-Gonzalez v. INS*, 564 F.2d 417, 429 (D.C.Cir.1977), "there is no doubt that the authority to make preference classification decisions rests with INS [now called CIS]. The language of section 204 cannot be

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of accountant. In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education
 - Grade School X
 - High School X
 - College X
 - College Degree Required Bachelor Degree
 - Major Field of Study Accounting

The applicant must also have four years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision, or four years of experience as an assistant accountant. Item 15 of Form ETA 750A relating to "Other Special Requirements" is blank.

The beneficiary set forth her credentials on Form ETA-750B and signed her name under a declaration that the contents of the form are true and correct under the penalty of perjury. In Part 11, that elicits information about schools, colleges and universities attended, including trade or vocational training, the beneficiary represented that she received a diploma from the I.B. Patel School of Computer Studies in computer programming attained after a course of instruction from January 1991 to January 1994. She also stated that she received a Bachelor's Degree in accounting from the University of Mumbai, Mumbai, India, attained after a course of instruction from June 1994 to June 1997. A diploma was submitted into the record of proceeding from the University of Mumbai, Mumbai, India dated December 12, 1997 stating that the beneficiary received a Bachelor of Commerce Degree (Three-Year Integrated Course) with the subject of Financial Accounting and Auditing (special).

At the outset, it is noted that the combination of a post-graduate diploma and a three-year baccalaureate degree may not be considered to be the equivalent of a U.S. bachelor's degree. 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, as will be discussed, employment experience. 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, is a Bachelor's Degree in Accounting and four years of experience in the job offered or four years of experience as an assistant accountant.

The petitioner specified a bachelor's degree as the job requirement on the Form ETA 750A. It is 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. The petitioner's clear intent is expressed in the certified Alien Employment Application. It is important to iterate that it is not just CIS' requirements that are the issue in this case but that the petitioner required in the labor certification a Bachelor's Degree in Accounting and four years of experience in the job offered or four years of experience as an assistant accountant.

read otherwise all matters relating to preference classification eligibility not expressly delegated to DOL remain within INS' authority."

The regulations define a third preference category “professional” as 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.” See 8 C.F.R. § 204.5(l)(2). The regulation uses a *singular* description of foreign equivalent degree. Thus, 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.

The petitioner submitted an education credential evaluation dated November 4, 2005, prepared by Global Education Group, Inc. of Miami Beach, Florida, of the beneficiary’s foreign schooling as it equates to higher education offered in the United States. The evaluator stated in pertinent part that the beneficiary’s education and professional work experience are equivalent to the “U.S. degree of Bachelor of Business Administration in Accounting awarded by a regionally accredited university in the United States.” The evaluator recounted that the beneficiary was employed as a “~~Manager-Computer Accounting Systems~~” from February 1, 1993 to December 15, 1993, by the [REDACTED] Mumbai, India, and, by Regal Developers, Mumbai, India from January 8, 1994 to July 28, 1998 as “Senior Accountant.” Further, the evaluator stated that the beneficiary was employed by the petitioner from August 1998 to June 1999. According to the evaluator, three years of work experience for one year of higher education by “rule” that is applicable to this matter involving an immigrant petition satisfies the educational requirement. The evaluator offers no substantiation for this reasoning.⁴

Taking the evaluator’s assertion on its face, to prevail, the petitioner would have had to advertise and recruit American workers other than as stated on the Alien Employment Application. That is to say, instead of advertising according to the terms of the labor certification for applicants having a bachelor’s degree in accounting, the petitioner would have had to depart from the terms of the labor certification. There is no evidence submitted that the petitioner advertised and recruited applicants with less than four year degrees other than as stated in the labor certification. There is no “bachelor’s degree or equivalent” language in the labor certification. It is also important to note, contrary to counsel’s contention, that the labor certification’s terms do not explicitly state any alternatives to a four year bachelor’s degree such as a combination of degrees or lesser education plus work experience.

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 evaluator, the beneficiary has less than a four-year college degree. This matter is not in dispute. The evaluator contends that job experience together with the above mentioned degree satisfies the educational requirement for the preference category. The evaluator presented no substantiation for this unsupported statement. We find this opinion is also not credible for lack of substantiation and quantification.

Despite the evaluator’s contention, CIS will not accept a degree equivalency made up of education and experience when a labor certification plainly and expressly requires a Bachelor’s Degree from a college or university is specified in the labor certification. It is noted that *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988),

⁴ Certain *nonimmigrant* visas do allow a combination of education and experience. See 8 C.F.R. § 214.2 (h)(4)(iii)(C)(5).

provides: “[CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.”

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.

The Global Education Group evaluator then in a report on November 4, 2005, opines upon the beneficiary’s “minimum educational level requirement for the position of Accountant” with the petitioner. According to the evaluator the job “requires an applicant to hold a minimum of the U.S. bachelor’s degree in Business Administration, accounting or related area awarded by a regionally accredited university in the United States or foreign equivalent.” After recounting the job duties of the Accountant’s position the evaluator declares that “the tasks ... [of the job] would require ... abilities acquired in four years of academic study towards the U.S. bachelor’s degree in Business Administration, Accounting or related areas at a regionally accredited university in the United States or foreign equivalent.” After recounting the various course that would be taken by a college student over a four year program, the evaluator stated that “these courses are standard topics encompassed in four-year undergraduate degree programs in business, accounting and related areas offered by regionally accredited universities in the United States,” and, that the job requires such a degree and educational attainment. We agree. We note that this second report is contradictory to the first report in that the evaluator did not continue to opine that education and job experience would satisfy the job requirements of accountant.

The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has a United States baccalaureate or an equivalent foreign degree. The record indicates that the beneficiary does not hold a U.S. bachelor’s degree or a foreign equivalent degree to that required on the labor certification application..

The instant petition, submitted pursuant to 8 C.F.R. §204.5(3)(ii)(c), 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.