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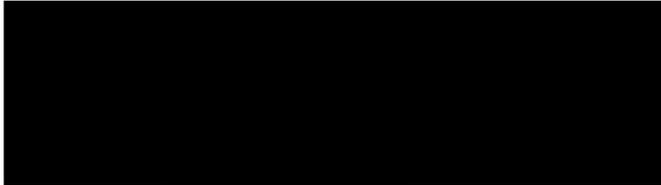
U.S. Department of Homeland Security
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U.S. Citizenship
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: MAR 29 2007
WAC 03 064 55909

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:

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.

Robert P. Wiemann, Chief
Administrative Appeals Office

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

The petitioner is a recording services business. It seeks to employ the beneficiary permanently in the United States as an electronic engineer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary is qualified to perform the duties of the proffered position with four years of qualifying employment experience. The director denied the petition accordingly.

The record shows that the appeal is properly filed and 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 February 16, 2005 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary is qualified to perform the duties of the proffered position.

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 nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 DOL 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 March 9, 2001.

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 appeal.¹ On appeal, the petitioner submits a letter. Other relevant evidence in the record includes a credentials evaluation from Universal Credential Evaluators Education Evaluation Service dated November 25, 2002, the beneficiary's college transcripts, the beneficiary's college diploma, the beneficiary's high school diploma and transcripts, a letter from the Crimean-Russian Trade Association regarding the beneficiary's previous employment experience, and an excerpt from the beneficiary's labor record issued by the Russian Documentation Center. The record does not contain any other evidence relevant to the beneficiary's qualifications.

On appeal, the petitioner asserts that during his college studies, the beneficiary also worked full-time from January 1991 through January 1996. Therefore, the petitioner states that the beneficiary is qualified for the proffered position based on his education and experience.

¹ 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).

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).

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 electronic engineer. In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education
 - Grade School blank
 - High School blank
 - College blank
 - College Degree Required B.Sc
 - Major Field of Study Electronic Engineering

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. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 11, eliciting information of the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), he represented that he received a Bachelor of Science in electronic engineering from the International Academy of Sciences in the Ukraine in June 1995, and that he attended the college from 1990 to June 1995. He does not provide any additional information concerning his education on that form. Further, on Part 15, eliciting information of the beneficiary's work experience, he represented that he has been unemployed since April 1996 and that he worked as an electronics engineer for the Russian Association of Trade in the Ukraine from January 1991 to January 1996. He does not provide any additional information concerning his employment background on that form.

The regulation at 8 C.F.R. § 204.5(1)(3) provides:

(ii) *Other documentation—*

(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 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 his decision, the director determined that the beneficiary had not met the minimum requirements for the proffered job at the time the labor certification application was filed. The director noted that the beneficiary claimed to have attended college from 1990 to June 1995 and to have worked full-time from January 1991 to January 1996.² On appeal, the petitioner asserts that during his college studies, the beneficiary also worked full-time from January 1991 through January 1996. However, the record does not establish how the beneficiary could have worked full-time and attended school full-time, resulting in the beneficiary obtaining a master of science degree. In a letter dated January 31, 2005, the petitioner stated that the beneficiary attended school for a period of two weeks every six months and studied at home the remainder of each year. However, the record of proceeding contains no evidence to support this assertion. The beneficiary's transcripts from the International Academy of Science, International Institute of Management, Business & Law, list the courses taken by the beneficiary and the grades achieved by him. However, the transcripts do not list the credits the beneficiary received for each course, the date each course was completed or the total credits received by the beneficiary. The record contains a credentials evaluation from Universal Credential Evaluators Education Evaluation Service dated November 25, 2002 which indicates that the beneficiary's diploma from the International Academy of Science is equivalent to a U.S. awarded Master of Science degree in Electronics Technology.³ 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). The evaluation from Universal Credential Evaluators Education Evaluation Service does not list or contain the diploma and/or transcripts on which the evaluation is based. Further, the evaluation does not conclude that the beneficiary's course of instruction that led to the diploma to be the equivalent of any specific amount of time spent at a United States college or university.⁴ The evidence does not establish that the beneficiary earned the

² It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

³ Universal Credential Evaluators Education Evaluation Service is not a member of the National Association of Credential Evaluation Services (NACES). The U.S. Department of Education refers individuals seeking verification of the equivalency of their foreign degrees to American degrees through private credential evaluation services to NACES. The objective of NACES is to raise ethical standards in the types of credential evaluations provided by the private sector. In light of the AAO's findings concerning the beneficiary's educational program, the credential evaluation provided by Universal Credential Evaluators Education Evaluation Service carries little evidentiary weight in these proceedings.

⁴ A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245

equivalent of a U.S. bachelor of science degree or a U.S. master of science degree, as the credentials evaluation suggests. If CIS fails to believe that a fact stated in the petition is true, CIS may reject that fact. Section 204(b) of the Act, 8 U.S.C. § 1154(b); *see also Anetekhai v. I.N.S.*, 876 F.2d 1218, 1220 (5th Cir.1989); *Lu-Ann Bakery Shop, Inc. v. Nelson*, 705 F. Supp. 7, 10 (D.D.C.1988); *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).⁵

The AAO affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary is qualified to perform the duties of the proffered position from the evidence submitted into this record of proceeding.

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.

(Comm. 1977).

⁵ In his decision, the director concluded that the beneficiary received approximately seven months of experience after receiving his degree and as a result, he determined that the beneficiary had not met the four year experience requirement for the proffered position. As noted herein, the record does not establish how the beneficiary could have worked full-time from January 1991 through January 1996 and attended school full-time from 1990 to June 1995. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).