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FILE: [REDACTED]
EAC-03-238-52846

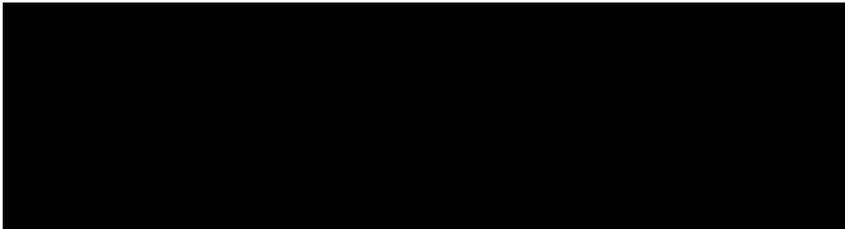
Office: VERMONT SERVICE CENTER

Date: **MAY 25 2007**

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:



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 Director, Vermont Service Center, denied the petition¹ and the Administrative Appeals Office (AAO) dismissed an appeal. The petitioner initiated litigation in the United States District Court of the District of Connecticut. The AAO is reopening the matter on its own motion, overturning its prior decision and replacing it with the foregoing.² The appeal will be sustained. The petition will be approved.

The petitioner is a world-wide provider of insurance and financial services. It seeks to employ the beneficiary permanently in the United States as an applications developer (senior associate). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (Form ETA 750 or labor certification application), approved by the Department of Labor (DOL). DOL assigned the occupational title of programmer analyst and occupational code of 030.162-014 to the proffered position. The director determined that the petitioner failed to establish that the beneficiary satisfies the minimum educational requirements according to the requirements of the proffered position and denied the petition accordingly. The AAO affirmed the director's decision.

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 January 20, 2005 denial and the AAO's January 4, 2007 decision, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary meets the requirements for the position as stated on the application for alien employment certification under the third preference as a skilled worker.

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.

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

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

¹ While the instant petition was pending with the AAO on appeal, the petitioner filed another immigrant visa petition on behalf of the instant beneficiary based on the same approved labor certification on February 22, 2005 (EAC-05-102-51584). The new petition was approved on February 26, 2007.

² See 8 C.F.R. § 103.5(a)(5)(i).

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 October 2, 2001.

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 applications developer (senior associate). In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | | |
|-----|-------------------------|---|
| 14. | Education | |
| | Grade School | - |
| | High School | - |
| | College | grad |
| | College Degree Required | Bachelor degree |
| | Major Field of Study | Engineering, Math, Physics, Computer Science* ³ |

The applicant must also have one year 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 in the related occupation of Programmer BI Consultant.

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 about schools, colleges and universities attended, including trade or vocational training, the beneficiary represented that he attended secondary school and post-secondary school from 1980 through 1983, attended Megs Datamatics in New Delhi, India studying computer programming from November 1984 through April 1985 which culminated in a Diploma in Computer Programming, attended Varanasi Sanskrit University in India studying English, Math, and Science from 1987 through 1988 for which he received a Bachelor of Science degree, and studied Impromptu and Powerplay at Cognos in Bracknell, United Kingdom, in April 2000 for which he received a certification.

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,

³ The * annotated the major field of study with "or equivalent."

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.

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 appeal⁴. The record contains the following relevant evidence pertaining to the beneficiary's qualifications: certificates of completion from various computer skills training programs; credential evaluations from Morningside Evaluations and Consulting (Morningside) and [REDACTED]; a Bachelor of Science degree in mathematics and physics issued to the beneficiary from Varanasey Sanskrit University and accompanying transcripts; secondary school certificates; and employment experience letters. The record does not contain any other evidence relevant to the beneficiary's qualifications.

Two credential evaluations were submitted into the record of proceeding for this case. The credential evaluation from Morningside combined the beneficiary's completed "three years of academic coursework towards a degree from an accredited institution of higher education in the United States" with his "eight years of work experience and professional training" to determine that he held the equivalent of a Bachelor of Science degree in Computer Information Systems from an accredited institution of higher education in the United States [REDACTED]. [REDACTED] stated that the beneficiary's completion of the Bachelor of Science Degree program significantly paralleled parameters and curricula at accredited institutions of tertiary education in the United States without providing an analysis of semester hours. Additionally, [REDACTED] combined the beneficiary's educational accomplishments with his employment experience to determine that his credentials were the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of tertiary education in the United States. Both credential evaluations concur that the beneficiary has the equivalent of a bachelor's degree through the combination of the completion of three years of study and work experience.

On appeal, counsel asserts that the case should be considered under the "skilled worker" category instead of the "professional category" and that the beneficiary has two years of qualifying employment experience. Subsequently, counsel submitted a copy of the holding in *Grace Korean United Methodist Church v. Michael Chertoff*, CV 04-1849-PK (D. Ore. November 3, 2005) and states that the case is "directly in point" without further elaboration.

⁴ 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).

The instant petition was filed to classify the beneficiary as a skilled worker. The regulation at 8 C.F.R. § 204.5(1)(3)(B) provides that a petition for an alien in this classification “must be accompanied by evidence that the alien meets the educational, training or experience, and other requirements of the individual labor certification.”

Although the certified Form ETA 750 requires a “Bachelor degree in Engineering, Math, Physics, [or] Computer Science,” the employer requires that an applicant graduate from college instead of complete four years of college studies as a US bachelor’s degree usually requires. The AAO thus interprets the educational requirement in this case as meaning that the employer is willing to accept a foreign three year bachelor degree to meet the bachelor degree requirement for the proffered position. The certified labor certification also indicates that the employer will accept an “equivalent” to meet the educational requirements. Although the employer did not specify the equivalent as a foreign equivalent degree to a four year US bachelor’s degree, considering the equivalent requirement together with the requirement of graduation from college instead of four years of college studies, the AAO will accept that the employer’s actual minimum education requirement in this case as something less than a four year US bachelor’s degree. The regulation governing skilled workers only requires that the beneficiary meet the requirements of the labor certification as long as the beneficiary has at least two years of qualifying training and/or employment experience. The AAO finds that the beneficiary is qualified as a skilled worker because the petitioner has demonstrated that the beneficiary meets the education and work experience requirements set forth on the Form ETA 750.

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 met that burden.

ORDER: The appeal is reopened by the AAO and sustained. The petition is approved.