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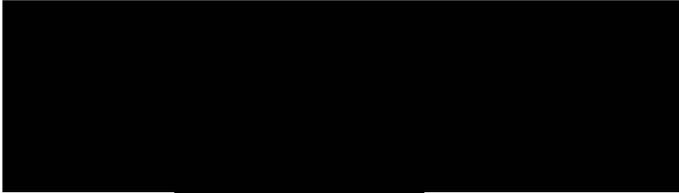
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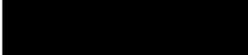
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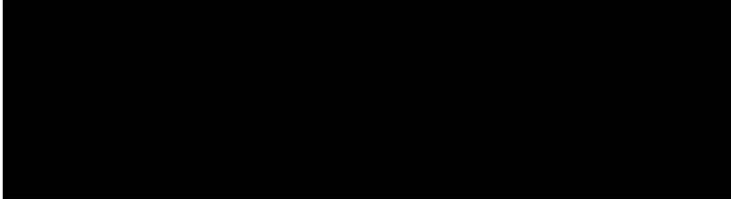
Petitioner:



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.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The employment-based immigrant 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 software development and consultancy firm. It seeks to employ the beneficiary as a senior software engineer. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner, through counsel, asserts that the beneficiary has the necessary educational credentials to meet the qualifications set forth in the approved labor certification.

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *See* 8 C.F.R. 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is October 19, 2001.

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, item 14 and item 15 set forth the minimum education, training, and experience that an applicant must have for the position of a senior software engineer. In the instant case, item 14 states the following:

- | | |
|--------------------------------|--|
| 14. Education | |
| College | ALL |
| College Degree Required | Master's degree or Bachelor's degree plus 5 years of progressive experience |
| Major Field of Study | Computer Science, Management Information Systems, Engineering, Mathematics, or related Field |
| Experience | None |
| Job Offered | |
| Related Occupation | |
| Related Occupation | |
| 15. Other Special Requirements | None |

For the reasons set forth below, the AAO does not find that the beneficiary obtained a degree in one of the designated fields of study. As evidence of the beneficiary's formal education, the petitioner submitted a copy of the beneficiary's diploma from The Maharaja Sayajirao University, India, issued April 1991, certifying that the beneficiary had received a Bachelor of Arts in Political Science with a minor in English. No grade transcript accompanied this diploma. Also provided is a copy of the beneficiary's diploma and grade transcripts from Gujarat University, India, indicating that the beneficiary received a Master of Arts degree in "Entire Political Science." Finally a certificate from the "Hi-Tech Computer Academy" in Ahmedabad, India

is contained in the record. It certifies that the beneficiary completed the course in "Diploma in Computer Application with B grade during July '94 to June '96." The petitioner also provided a copy of the beneficiary's resume.

The petitioner also submitted an evaluation report from "Foundation for International Services Inc.," dated June 9, 2004, prepared by [REDACTED], Evaluator. Ms. [REDACTED] credentials as an evaluator were not included. She determines that the beneficiary's Bachelor's degree is the U.S. equivalent of three years of university-level credit, and that his master's degree in political science is the equivalent to a master's degree in political science from a regionally accredited college or university in the United States. She further determines that the beneficiary's certificate from Hi-Tech Computer Academy represents the U.S. equivalent of the "completion of computer training offered at a private institution." Ms. [REDACTED] concludes after reviewing these credentials as well as the beneficiary's resume, and using a formula of equating three years of work experience to one year of university-level credit, that the beneficiary has:

...an educational background the equivalent of an individual with a bachelor's degree in computer information systems from a regionally accredited college or university in the United States. The Foundation used six years of Mr. [REDACTED] experience to arrive at the equivalent of a bachelor's degree in August of 1995. This would allow him 8+ years of experience that were not used to arrive at the above equivalency in the computer field.

An additional academic evaluation was submitted to the director in response to his subsequent request for additional evidence. This evaluation, dated August 5, 2005, is from "Park Evaluations & Translations" and was prepared by [REDACTED]. Mr. [REDACTED] determines that the beneficiary's Bachelor's degree in political science indicate that the beneficiary "satisfied requirements equivalent to those required for the completion of academic studies leading to a university degree from an accredited institution of higher education in the United States." He also determines that the beneficiary's diploma from Gujurat University "is evidence that Mr. Vivekanand completed the required coursework for candidates for the Master of Arts."

Referring to the beneficiary's diploma from the "Hi-Tech Computer Academy" as originating from "Kanpur University" and referring to the receipt date of the this diploma as 1995 rather than 1996 as shown on the diploma, Mr. [REDACTED] itemizes some of the courses taken at this institution, which have not been included in the record, and concludes that the beneficiary's formal education collectively represent the "equivalent of a Bachelor of Science in Computer Information Systems, from an accredited institution of higher education in the United States." It is noted that there is no reference to Kanpur University on the diploma originating from the Hi-Tech Computer Academy.

The director denied the petition on August 31, 2005. The director found that the evidence submitted did not meet the requirements of the approved labor certification because the beneficiary does not possess a U.S. Bachelor's degree or a foreign equivalent degree as required by the ETA 750 and applicable regulations.

On appeal, counsel asserts that the combination of degrees or diplomas may be used as equivalent of a Bachelor's degree for the third preference visa classification sought. In support of this argument, counsel submits copies of correspondence, dated January 7, 2003, from Efren Hernandez III of the former Immigration and Naturalization Service (INS) Office of Adjudications addressed to different counsel in response to their respective inquiries. In the letter, Mr. Hernandez expresses his opinion about the

possible means to satisfy the requirement of a foreign equivalent degree to a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2). Mr. Hernandez states that he believes that a single foreign degree is not required to satisfy this equivalency and that a combination of degrees could satisfy the equivalency. Counsel asserts that this letter supports the approval of the petition based on the beneficiary's cumulative academic credentials.

Counsel's assertion is not persuasive in this matter. While it is certainly conceivable that an advanced degree may consist of two degrees, i.e., a baccalaureate and a master's degree, the Hernandez letter involved the interpretation of a different regulatory provision than that primarily guiding the present case, i.e., an equivalent of a U.S. advanced degree, not a baccalaureate degree. Moreover, private discussions and correspondence solicited to obtain advice from Citizenship and Immigration Services (CIS) are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

CIS is bound to follow the pertinent regulatory guidelines pursuant to 203(b)(3)(A)(ii) of the Act. CIS's jurisdiction includes the authority to examine an alien's qualifications for preference status and to investigate the petition under section 204(b) of the INA, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *Madany 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 v. Coomey*, 662 F.2d 1 (1st Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-FengChang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree in a specified field of study even where a classification may not require a Bachelor's degree.

In this case, the ETA 750 states that the proffered position requires a Master's degree or a Bachelor's degree plus 5 years of progressive experience. Both degrees must be in specified fields of study and not a combination of certificates or lesser degrees, which could be considered the equivalent of a Bachelor's in a particular field. Even if viewed as a petition for a skilled worker, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides that the evidence must show that the alien has the education, training or experience, and any other requirements of the individual 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).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) also provides in pertinent part:

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 member of the professions, the petitioner must submit evidence showing that

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

We find that “an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration or study” is applicable to what constitutes evidence of a degree. Because neither the Act nor the regulations indicate that a Bachelor’s degree must be a United States Bachelor’s degree, as noted above, CIS will recognize a foreign equivalent Bachelor’s degree to a United States baccalaureate. The above regulation uses the singular description of a 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 labor certification and regulation cited above require that an applicant for the position of senior software engineer have either a Master’s degree or a Bachelor’s degree plus 5 years of progressive experience. The designated fields of study on the ETA 750A are computer science, management information systems, engineering, mathematics, or a related field. Political science is not a related field. None of the beneficiary’s diplomas represents either an undergraduate or graduate course of study in one of the designated majors, described in Item 14 of the ETA 750. It is noted that the Certificate from the Hi-Tech Academy doesn’t convey any degree such as a B.A. or M.A.

Although the preamble to the publication of the final rule at 8 C.F.R. § 204.5 in 1991 specifically dismissed the option of equating “experience alone” to the required bachelor’s degree for a second preference classification as an advanced degree professional or as a professional under the third classification, similar reasoning would also prohibit the acceptance of an equivalence in the form of combined multiple degrees, professional training, or any other level of education deemed to be less than a “foreign equivalent degree” to a United States baccalaureate degree. *See* 56 Fed. Reg. 60897 (Nov. 29, 1991).

It is further noted that the formula employed in the Conlen evaluation refers to a specific guideline set forth in non-immigrant regulations. Those regulations encompass guidelines using a formula of equating three years of experience for one year of education. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). The regulations governing immigrant petitions do allow a combination of progressive work experience and a Bachelor’s degree to be considered the equivalent of an advanced degree. *See* 8 C.F.R. § 204.5(k)(2). However, there is no comparable provision to substitute a combination of lesser degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. It remains that the ETA 750 requires the beneficiary to hold a Bachelor’s degree.

In this case, while it may be viewed that the beneficiary holds at least the foreign degree equivalent of a Bachelor’s degree in political science, neither his studies at The Maharaja Sayajirao University, Gujarat University, or his training received at the Hi-Tech Computer Academy indicate that he has ever received a Master’s degree or Bachelor’s degree in computer science, management information systems, engineering, mathematics, or a related field.

In view of the above, neither credentials evaluation is considered as probative of the beneficiary’s educational credentials. Moreover, as noted above, the Miller evaluation mentions dates, courses taken, and institutional names that are not consistent with the documents submitted above. 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, the Service 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 petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.