

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY



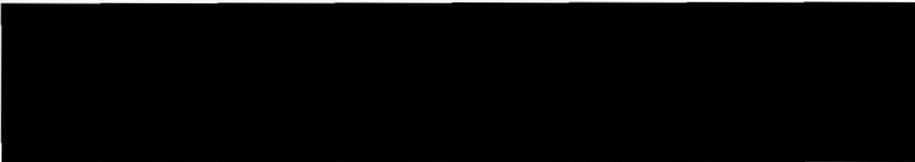
B6

FILE: LIN-06-041-51409 Office: NEBRASKA SERVICE CENTER Date: **MAY 13 2008**

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 sustained and the petition will be approved.

The petitioner is a public school system. It seeks to employ the beneficiary permanently in the United States as a secondary school teacher (science teacher). As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL) accompanied the petition. The director determined that the petitioner had not established that the beneficiary had a bachelor's degree or the equivalent as required by the Form ETA 750 as certified. Therefore, he denied the petition.

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. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

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.

On appeal, counsel asserted that the beneficiary holds two baccalaureate degrees awarded by the University of Madras in India, which are the equivalent of a U.S. bachelor's degree. In order to determine whether the instant beneficiary meets the minimum academic requirements of a bachelor's degree or equivalent set forth on the certified Form ETA 750, the AAO issued a request for evidence (RFE) on November 15, 2007 granting the petitioner 12 weeks to submit additional evidence to support its assertions on appeal. The AAO received the response on January 24, 2008.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also*, *Janka v. U.S. Dept. of Transp., NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal and in response to the AAO's RFE.¹ Relevant evidence submitted with the initial filing includes the beneficiary's degree of Bachelor of Science in Botany and the transcripts, degree of bachelor of education and the transcripts from the University of Madras; the beneficiary's teacher licenses from the Ohio Department of Education; and an evaluation report from International Consultants of Delaware, Inc. (ICD). On appeal counsel submitted printouts from American Association of Collegiate Registers and Admissions Officers (AACRAO), *Foreign Education Credentials Required* – Fifth Edition, printouts from *Universities Handbook by Association of Indian Universities*, an evaluation report from [REDACTED], a letter from Ohio Office of Certification/Licensure Center for the Teaching Profession regarding the beneficiary's teacher's license, printout of Frequently Asked Questions from ICD's website, a revised evaluation report from ICD and an affidavit from the beneficiary regarding his education in India. In response to the AAO's RFE, counsel

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).

provides a brief, a printout of AACRAO's Electronic Database for Global Education (EDGE) credentials, and copies of the labor certification application including the Form ETA 750, submission letter, prevailing wage determining materials, newspaper advertisements, website advertisements, and notice of job opening.

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. *See* 8 C.F.R. § 103.2(b)(1), (12). *See also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The priority date for the instant petition is June 9, 2003. On the Form ETA 750B, signed by the beneficiary on June 6, 2003, the beneficiary claimed to have worked for the petitioner beginning in August 2001 and continuing through the date that the Form ETA 750B was signed.

The Form I-140, *Immigrant Petition for Alien Worker*, was submitted on November 23, 2005. On the petition, the petitioner claimed to have been established in 1836, to have a gross annual income of \$600,000,000, and to currently have 9,651 employees.

The original Form ETA 750 was accepted on June 9, 2003 and approved on September 23, 2005. The approved labor certification in the instant case requires a Bachelor's Degree or foreign academic equivalent in any major. However, the course of study must include adequate preparation in one or more science fields, and in education, to qualify for eventual licensure as a science teacher pursuant to Ohio law. DOL assigned the occupational code of 091.227-010, secondary school teacher, the closest type of occupation as 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=091.227-010+&g+Go> (accessed April 14, 2008) and its extensive description of the position and requirements for the position most analogous to programmer analyst position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to science teacher 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/25-2031.00#JobZone> (accessed April 14, 2008). 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.

Therefore, a science teacher position could be properly analyzed as a professional or as a skilled worker since the normal occupational requirements do not always require a bachelor's degree but a minimum of two to four years of work-related experience. However, a professional occupation is statutorily defined at Section 101(a)(32) of the Act as including but not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." It is noted that the position

of science teacher filed by the petitioner in the instant petition is listed as one of the professional occupation by section 101(a)(32) of the Act. In addition, the petitioner filed a Form I-140, Immigrant Petition for Alien Worker, seeking classification pursuant to section 203(b)(3)(A) of the Act under the professional category. On appeal and in response to the AAO's RFE, counsel continues to seek the beneficiary for the third classification under the professional category. Therefore, the AAO finds that the director properly analyzed and adjudicated the instant petition under the professional category and will examine the petition under the professional category only on appeal to determine whether the beneficiary meets the specific education, training, and experience terms of the job offer on the alien labor certification application as a professional.

For the professional category, 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 above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification 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.

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, which as noted above, is June 9, 2003. 8 C.F.R. §§ 103.2(b)(1) and (12). See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

The beneficiary set forth her credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), she indicated that she attended Ethiraj College in Chennai, India in the field of "Botany" from June 1982 to September 1985, culminating in the receipt of a "Bachelor of Science" degree; she attended University of Madras in Chennai, India in the field of "Education" from January 1992 to November 1992, culminating in the receipt of a "Bachelor of Education" degree; and she attended University of Madras in Chennai, India in the field of "Education" from January 1996 to November 1996, culminating in the receipt of "no" degree or certificate. She provides no further information concerning her educational background on this form, which was signed by the beneficiary under penalty of perjury that the information was true and correct.

In corroboration of the beneficiary's educational background, the petitioner provided a copy of the beneficiary's Bachelor of Science degree and transcripts in Botany from the University of Madras in September 1985, a copy of the beneficiary's Bachelor of Education degree and transcripts from the University of Madras in October 1993, and evaluation reports from ICD and JS&A.

The beneficiary possesses a three-year bachelor of science degree in Botany from the University of Madras and a bachelor of education degree from the same university. In determining whether the beneficiary possessed a single U.S. bachelor's degree or a foreign equivalent degree, we have reviewed EDGE created by AACRAO. AACRAO, according to its website, <http://www.aacrao.org>, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional

development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services.” According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register/index/php>, EDGE is “a web-based resource for the evaluation of foreign educational credentials.” EDGE provides a great deal of information about the educational system in India. While it confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. Therefore, the beneficiary’s bachelor of science degree in Botany awarded upon completion of three years of study at college level in the University of Madras is not a single foreign equivalent degree to a U.S. baccalaureate.

EDGE also provides a great deal of information about the bachelor of education degree in India. It confirms that a bachelor of education degree is awarded upon completion of one year of study beyond the two- or three-year bachelor's degree. However, EDGE differs a bachelor of education degree beyond the two-year bachelor's degree from the one beyond the three-year bachelor's degree. While EDGE suggests that a bachelor of education, following a two-year bachelor's degree, represents attainment of a level of education comparable to one year of university study in the United States, a bachelor of education, following a three-year bachelor's degree, represents attainment of a level of education comparable to a bachelor's degree in the United States. The beneficiary’s bachelor of education from the University of Madras is awarded upon completion of one year of study beyond the three-year bachelor's degree. Pursuant to EDGE, this is a single degree, which represents attainment of a level of education comparable to a bachelor's degree. Therefore, the beneficiary’s bachelor of education from the University of Madras may be deemed as a foreign equivalent degree to a U.S. baccalaureate.

Therefore, the record contains evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree to be qualified as a professional for third preference visa category purposes. Because the beneficiary does have a “United States baccalaureate degree or a foreign equivalent degree,” the beneficiary qualifies for preference visa classification under section 203(b)(3)(ii) of the Act as she has the minimum level of education required for the equivalent of a bachelor's degree. The AAO concurs with counsel's assertions that the petitioner demonstrated that the beneficiary holds a foreign equivalent degree as required by the Form ETA 750 and the regulation, and therefore, the director's ground denying the petition under professional category must be withdrawn.

The Form ETA 750 in the instant case sets forth special requirements in the item 15, which reads as follows:

Must possess an Ohio teacher's license or certificate, or meet all eligibility requirements for immediate licensure in any capacity. Must achieve passing score on pre-hiring tests. Must pass drug screening test and criminal history check.

The record contains the beneficiary's teacher license issued by the Ohio Department of Education. Therefore, the beneficiary meets the requirements of an Ohio teacher's license or certificate, or eligibility for immediate licensure in any capacity. The record indicates that the beneficiary had worked in the position since August 2001. The fact the beneficiary has been working for the petitioner in the proffered position may be evidence that the beneficiary also meets the requirements of passing score on pre-hiring tests, passing drug screening test and passing criminal history check prior to employment. Therefore, the beneficiary also meets the other special requirements set forth in Item 15 of the Form ETA 750A.

For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal and in response to the AAO's RFE are sufficient to overcome the basis of denial in the decision of the director. The petitioner has demonstrated that as of the priority date the beneficiary had the requisite foreign equivalent degree to the U.S. bachelor's degree and other special requirements, as set forth on the Form ETA 750 as certified. *See* 8 C.F.R. § 103.2(b)(1), (12). *See also Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

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 sustained. The petition is approved.