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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 28 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[redacted]

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, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Nebraska Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a software development and computer consulting company. It seeks to employ the beneficiary permanently in the United States as a Senior Programmer Analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as member of the professions holding an advanced degree. As required by statute, the petition was accompanied by certification from the Department of Labor. The director found the petitioner had failed to establish that the beneficiary meets the minimum requirement of a baccalaureate degree or its foreign equivalent. The director also determined that the beneficiary's degree was not included in the types of degrees listed as acceptable for the position offered on the addendum to Form ETA-750A.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) states:

> Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states:

> (i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:
>
> > (A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or
> >
> > (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

Counsel asserts that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree, and at least five years of progressive post-baccalaureate experience in the specialty. We agree with the director that the letters from the beneficiary's employers demonstrate that the beneficiary has at least five years of progressive experience in his specialty. The issue to be determined here is whether the beneficiary holds "a United States baccalaureate degree or a foreign equivalent degree."

The requirement of a "foreign equivalent degree" at 8 C.F.R. § 204.5(k) indicates that the alien must possess a single degree (rather than a combination of degrees or experience) that is, standing alone, equivalent to a U.S. baccalaureate.

The petition was accompanied by an educational evaluation dated March 29, 2003 from

1. [The beneficiary] was awarded the degree of Bachelor of Science from the University, India in 1992. This is equivalent to a three-year program of academic studies in Mathematics and transferable to an accredited university in the United States.

2. [The beneficiary] was awarded Certificates (i) in Oracle and Powerbuilder from the for Computer Education, India in 1996 and (ii) in Unix & C from the Hardsoft Solutions Ltd., India in 1993.

3. [The beneficiary] has over nine years of extensive training and professional experience in software engineering, system analysis and computer program design and development.

4. The U.S. Immigration Law and Regulations allow three years of specialized training or work experience to substitute for every year that the alien lacks at the university level. Based on these guidelines, [the beneficiary] needs three years of experience to compensate for his one year of university education.

* * *

[The beneficiary's] over nine years of progressively responsible experience in hardware and software engineering are equivalent or exceeding to over one year diploma of academic studies (three years of experience = 1 year of university-level credits) [sic].

concluded the evaluation, stating: "[The beneficiary's] education and professional experience are equivalent to an individual with a bachelor degree in Mathematics and Computer Science from an accredited University in the United States."

The above credentials evaluation states that the beneficiary has the equivalent of a United States baccalaureate degree in Mathematics and Computer Science based on a combination of factors (academic study and employment experience). erroneously relies on nonimmigrant regulations rather than the pertinent immigrant regulations. We note here that the nonimmigrant regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which is irrelevant to the present case, states: "For purposes of determining

equivalency to a baccalaureate degree in the specialty, three years of specialized training and/or work experience must be demonstrated for each year of college level training the alien lacks." The applicable immigrant regulation at 8 C.F.R. § 204.5(k)(3)(i), however, indicates that the alien must possess a single degree (rather than a combination of degrees or experience) that is the equivalent of a U.S. baccalaureate degree.

On August 4, 2003, the director issued a notice requesting the petitioner to submit evidence showing that the beneficiary has "earned a U.S. baccalaureate, or its foreign equivalent." The director also noted "the beneficiary's three-year degree does not appear to be in one of the major fields of study specified as acceptable on Form ETA-750."

The petitioner's response included a certificate from Sena Infotech System stating: "This is to certify that [the beneficiary] has successfully completed the Postgraduate Diploma in Computer Applications held from [June 8, 1992] to [May 23, 1994]." We note that the documentation accompanying the petition and the initial credentials evaluation from made no mention of this "Postgraduate Diploma." The petitioner's initial submission did include a letter Director of dated October 15, 1999, verifying the beneficiary's employment there "from February 1992 to November 1994 in the position of Senior Programmer/Analyst on a full-time basis." We note here that the Sena Infotech System Postgraduate Diploma certificate and the employment verification letter were both signed by the same individual The Postgraduate Diploma Certificate identifies "Course Director."

Also submitted in response to the director's request for evidence was a new educational evaluation from Although the second evaluation submitted fro as the exact same date as the first evaluation (March 29, 2003), it differs in its analysis of the beneficiary's credentials tates:

1. [The beneficiary] was awarded the degree of Bachelor of Science from the n 1992. This is equivalent to a three-year program of academic studies in Mathematics and transferable to an accredited university in the United States.

2. [The beneficiary] was awarded a Post-Graduate Diploma in Computer Applications from the Sena Infotech System, India in 1994. This is two years of studies in Computer Science....

3. [The beneficiary] was awarded a Certificate in Oracle and PowerBuilder from the Nityanjan Institute for Computer Education in India in 1996.

4. [The beneficiary] was awarded a Certificate in Unix & C from the Hardsoft Solutions Ltd., India in 1993.

concluded the evaluation by stating:

Based on the reputations of the the number of years of course work, the nature of course work, the grades earned in these courses, hours of academic course work,

> and admission requirements for the awards, [the beneficiary's] degree of Bachelor of Science and Post-Graduate Diploma in Computer Applications are equivalent to an individual with a Bachelor of Science degree in Mathematics and Computer Science from an accredited university in the United States.

The director denied the petition, stating:

> Title 8, Code of Federal Regulations, Part 204.5(k)(2) allows that a United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. However, a three-year college degree, either alone or in combination with post-graduate training courses and/or work experience, constitutes neither a United States baccalaureate degree nor a foreign equivalent degree. Further, the beneficiary's Bachelor of Science degree [in Mathematics] is in a field other than those specified on the Form ETA-750. Therefore, the evidence submitted...does not establish that the beneficiary has complied with the educational requirements of Form ETA-750.

On appeal, counsel protests the director's finding, stating: "There is no statutory requirement that the formal educational component of the alternate description be in any specific discipline, only that the education be a "United States baccalaureate degree or foreign equivalent degree."

The regulation at 8 C.F.R. § 204.5(k)(4)(i) states in pertinent part that:

> Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor.... The job offer portion of the individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability.

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 Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Blocks 14 and 15 of the ETA-750 Part A must establish that the position requires an employee with either a master's degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(4)(i). It is important that the ETA-750 be read as a whole. In particular, if the education requirement in block 14 includes an asterisk (*) or other footnote, the information included in the note must be included in determining whether the beneficiary meets the minimum acceptable education requirements for the position.

In this case, block 14 states that the minimum education allowable for this position is a Master's degree in Computer Science or a related field. Block 14 also includes an asterisk indicating "[s]ee attached addendum." The attached addendum to the ETA-750 Part A states the following: "ITEM 14, EDUCATION, RELATED FIELD INCLUDES ELECTRONICS, ELECTRICAL ENGINEERING, MANAGEMENT INFORMATION

SYSTEM[S] OR WILL ACCEPT BACHELORS DEGREE AND FIVE YEARS OF PROGRESSIVE EXPERIENCE IN LIEU OF EDUCATION AND EXPERIENCE."

Counsel states: "Nowhere does the application specify any field of study for the bachelor's degree in the alternate description." Counsel argues, in essence, that a bachelor's degree in any field would comply with the terms of the labor certification in this case. Counsel's argument implies that individuals with a bachelor's degree in fields such as botany, psychology, accounting, or biology would be able to perform the duties required of this position. We find it quite interesting that the petitioner would place more stringent demands on an individual possessing a Master's degree and the requisite experience by requiring his or her degree to be in Computer Science, Electronics, Electrical Engineering, or Management Information Systems, yet allow an individual with only a bachelor's degree and the requisite experience to have obtained this lesser degree in any field whatsoever.

While the director's observation that the beneficiary's three-year bachelor's degree in Mathematics from India is in a field other than those specified on the Form ETA-750 is not entirely without merit, we acknowledge that the phrase "OR WILL ACCEPT BACHELORS DEGREE AND FIVE YEARS OF PROGRESSIVE EXPERIENCE IN LIEU OF EDUCATION AND EXPERIENCE" is so vague that it could be interpreted as permitting a bachelor's degree in any field of study. This issue is moot, however, because it remains that the petitioner has not established that the beneficiary possesses a "United States baccalaureate degree or a foreign equivalent degree" or a "foreign equivalent degree above that of baccalaureate."

In regard to the two educational evaluations from [redacted] Citizenship and Immigration Services (CIS) may, [redacted] 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); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

By combining the beneficiary's three-year degree in Mathematics with the various computer training courses he completed (two entirely different fields of study), the evaluator from Multinational Education and Information Services, Inc. concluded that the beneficiary's educational qualifications are equivalent to those of "an individual with a Bachelor of Science degree in Mathematics and Computer Science from an accredited university in the United States."

There is, however, no statute, regulation, or standing precedent that would allow a beneficiary to qualify under section 203(b)(2) of the Act with anything less than a full baccalaureate degree. If the beneficiary does not actually hold a U.S. baccalaureate degree (or a full equivalent degree from a foreign institution), the beneficiary cannot qualify as a member of the professions holding an advanced degree. A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

Because the beneficiary does not possess a single degree that is the "foreign equivalent degree" to a United States baccalaureate degree, it has not been established that he qualifies as a professional holding an advanced degree under section 203(b)(2) of the Act.

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 sustained that burden.

ORDER: The appeal is dismissed.