U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: LIN 02 231 50908 [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 15 2004

IN RE: Petitioner: [redacted]
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:

[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
for Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the preference visa petition that is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a telecommunication service. It seeks to employ the beneficiary permanently in the United States as a network engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the petitioner applied and denied the position accordingly.

On appeal, counsel submits a brief.

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

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

"*Professional* means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions."

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

> *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 of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

If the petition is for a professional pursuant to 8 C.F.R.§204.5(l), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted for processing on June 22, 2001. The Form ETA 750 states that the proffered position requires a master's degree in computer science, computer information systems, engineering, electrical engineering, mathematics, physics, business administration with a concentration in computer science, or a related field or the equivalent, or, in the alternative, a bachelor's degree in one of those fields and five years of experience.

With the petition, counsel submitted no evidence that the beneficiary possesses a bachelor's degree from an institution in the United States. Counsel submitted the report of an educational evaluator that stated that the beneficiary's education and work experience, taken together, are the equivalent of a bachelor's degree in electrical engineering technology at an institution of higher learning in the United States. The evaluator did not state that the beneficiary's education and degrees alone, without the beneficiary's experience, are the equivalent of a U.S. bachelor's degree.

Because the evidence submitted did not indicate that the beneficiary has the requisite degree, the Director, Nebraska Service Center, on September 11, 2002, requested additional evidence. Specifically, the director requested evidence that the beneficiary has either (1) three years of experience and a master's degree in one of the suitable fields or (2) five years of experience and a bachelor's degree in one of the suitable fields.

Counsel responded with a letter, dated December 3, 2002. In that letter, counsel stated that the two alternative requirements as stated in the Request for Evidence are not the requirements for the proffered position. Counsel stated that in either option, some equivalent might be substituted for the degree. Thus, according to counsel, the beneficiary must possess a (1) master's degree or the equivalent plus three years of experience or (2) a bachelor's degree or the equivalent plus five years of experience.

In support of his interpretation of the language on the Form ETA 750, counsel provided a letter, dated April 19, 2001, from the petitioner to the Missouri Division of Workforce Development. In that letter, the petitioner's immigration coordinator stated:

> The minimum educational requirement for this position is a Master's degree or the equivalent in Computer Science, Computer Information Systems, Management Information Systems, Engineering, Electrical Engineering, Mathematics, Physics, Business Administration with a concentration in Computer Science, Computer Information Systems, or a related field or the equivalent plus three years of experience in a position involving network engineering functions in a communications environment
>
> In lieu of a Master's degree plus three years of experience, a bachelor's degree or the equivalent in one of the fields noted above plus five years of experience would also satisfy our requirements.
>
> We believe the degree and experience are essential to the position of Network Engineer in order to insure the employee possesses the ability to perform the complicated development and implementation of network plans.

The director determined that the Form ETA 750 calls for either a master's or a bachelor's degree plus work experience, and that the evidence submitted did not establish that the beneficiary has either degree. The director denied the petition on February 10, 2003.

On appeal, counsel again argues that pursuant to the language on the Form ETA 750, the beneficiary is qualified for the proffered position because he has the equivalent of a bachelor's degree. Counsel further argues that, "If the wording on the ETA is ambiguous, unclear or not otherwise properly worded, Petitioner would be in the best position to explain what the chose words are meant to mean and has done so."

Neither counsel, nor the petitioner, nor this office is able to vary the terms of an approved labor petition. The Form ETA 750 shall not now be construed in accordance with what the petitioner meant to say. Any vagueness or ambiguity need not be reconciled according to the petitioner's wishes, especially in view of the fact that the petitioner might, when the Form ETA 750 was drafted, have rendered it clear and unequivocal.

The April 19, 2001 letter from the petitioner to the Missouri Division of Workforce Development is of no help in interpreting the requirements of the Form ETA 750. First, the record does not indicate that the Department of Labor approved the petition based on the language in that letter, rather than the language on the Form ETA 750 itself. Second, the language in the letter does not make clear whether, in calling for a master's or bachelor's degree or the equivalent, it is referring to the equivalent in terms of experience or an equivalent foreign degree. Even if it were controlling, the letter does not resolve the ambiguity of the terms of the labor certification.

Neither section 203(b)(3)(A)(i) of the Act, nor section 203(b)(3)(A)(ii) of the Act, nor the associated regulations allows the substitution of employment experience, in whole or in part, for the requisite education as stated on an approved labor certification. The substitution of experience for a required degree is therefore disfavored. In the absence of clear language on the Form ETA 750 stating that experience may be substituted for the requisite degree, "a bachelor's degree or equivalent" shall be interpreted to mean a U.S. bachelor's degree or an equivalent foreign degree.

The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has a United States master's degree or bachelor's degree[1] or an equivalent foreign degree. The instant petition, submitted pursuant to 8 C.F.R.§204.5(l), may not be approved.

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.

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[1] In addition to one of the two degrees, of course, the petitioner would have to show that the beneficiary had the requisite corresponding experience as stated on the Form ETA 750. This office notes that the March 31, 1998 evaluation states that the beneficiary's education and experience, taken together, are the equivalent of a bachelor's degree. It does not state that the beneficiary's education and experience, taken together, are the equivalent of a bachelor's degree **plus five years of experience**, as the Form ETA 750 requires.