



U.S. Citizenship  
and Immigration  
Services

invasion of personal privacy

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FEB 10 2005

FILE: [REDACTED] Office: TEXAS SERVICE CENTER Date: [REDACTED]  
SRC-01-267-56211

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:

[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*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal.<sup>1</sup> The appeal will be dismissed. The director's decision is withdrawn in part and sustained in part.

The petitioner's business is primary medical care. It seeks to employ the beneficiary permanently in the United States as a physician assistant. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because she determined that the petitioner failed to provide sufficient evidence that the beneficiary is qualified for the proffered position. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification.

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. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of 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)(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.

Regardless of whether the petitioner is seeking to classify the petition under 203(b)(3)(A)(i) or (ii) of the Act, however; to be eligible for approval, a beneficiary must also have the education and experience specified on the labor certification as of the petition's filing date. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). In this case, that date is October 7, 1998.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, 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, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of physician assistant. In the instant case, item 14 describes the requirements of the proffered position as follows:

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<sup>1</sup> The petitioner filed the same petition previously but it was denied for failure to respond to the director's request for evidence, for which there were no appellate rights. The petitioner re-filed the instant petition.

14.	Education	
	Grade School	6
	High School	6
	College	4
	College Degree Required	Bachelor of Science
	Major Field of Study	Science

Under Item 15, the petitioner also set forth additional special requirements as follows: "Board Certification by the National Commission on Certification of Physician Assistants or Board eligible. Current State of Florida Physician Assistant license."

The beneficiary set forth her credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), she indicated that she attended [REDACTED] in Port-au-Prince, Haiti from October 1960 until July 1968 where she studied "Mathematics" and received a "Bachelor of Science degree." Also, the beneficiary indicated that she attended "Facultad de Medicina" in Zaragoza, Spain where she studied "Medicine" from October 1969 to July 1977 and received a degree in "Doctor of Medicine." She provides no further information concerning her educational background on this form, which is signed by the beneficiary under a declaration under penalty of perjury that the information was true and correct.

On Part 15, eliciting information concerning the beneficiary's past employment experience, the beneficiary indicated that she has been employed with the petitioner since November 1993 as a physician assistant and continued to be employed with the petitioner as of the date of filing the ETA 750A in 1998. With the initial petition, the petitioner provided a letter dated June 8, 2001, stating that the beneficiary has been employed with their health center as a physician assistant since 1992.

In support of the petition, the petitioner submitted copies of the beneficiary's physician assistant licenses issued on September 17, 1998 and expiring on January 31, 2000, and re-issued on February 19, 2000 and expiring on January 31, 2002, from the state of Florida; a copy of a letter from the Florida Board of Medicine Department of Professional Regulation, dated December 11, 1991, stating that the beneficiary was issued a temporary certification as a physician assistant "with the provision that [she] obtain 25 hours of Category I continuing medical education credits acceptable to the National Commission on Certification of Physician Assistants within six (6) months"; a copy of a letter from the Florida Board of Medicine Department of Professional Regulation, dated January 24, 1992, stating that the beneficiary was approved for a temporary certification as a physician assistant which will "expire upon receipt and notice of scores from the first available examination. An applicant who fails the proficiency examination is not longer temporarily certified and is ineligible for any further temporary certification"; a copy of an unsigned letter from the Florida Department of Health, dated August 6, 1998, stating that the beneficiary was issued a temporary certificate on January 24, 1992 "expiration date upon receipt and notice of scores from the exam which was given June 25, 26 1998. An applicant who fails will be able to request for a one year extension of the TC"; and copies of a Secondary Education certificate issued by the Haitian Office of National Education on March 17, 1976 for completion of the courses in 1968, in French with a certified English translation, and a Medical Doctor degree issued by the Spanish Minister of Education and Science on July 12, 1977 for the successful completion of "the prescribed course of study" at the Universidad de Zaragoza, in Spanish with a certified English translation. The petitioner also submitted copies of various letters showing the beneficiary's employment as Physician for a Health Center at St. Martin, Haiti, in 1981;

as Physician in la Croix de Bouquets, Haiti, in 1980; as Municipal Physician in Saint-Marc, Haiti, in 1983; and permission to attend a professional conference in Washington, D.C. while employed at Saint-Marc in 1984, all in French with certified English translations.

Because the evidence was insufficient, the director requested additional evidence on March 19, 2003, specifically requesting proof that the beneficiary was licensed as a physician assistant prior to October 7, 1998 and copies of all licenses, and supporting documentation of the beneficiary's educational credentials and employment experience.

In response to the director's request for evidence, the petitioner re-submitted previously submitted evidence.

The director denied the petition on May 16, 2003, finding that the beneficiary did not provide a current physician assistant license, that the evidence did not indicate that the beneficiary has the required board certification or board eligibility for certification, or two years of training as a physician assistant.

On appeal, counsel asserts that the director erred and submits additional evidence. The petitioner submits previously submitted evidence and new evidence such as a credential evaluation conducted by Morningside Evaluations and Consulting on June 16, 2003 and signed by [REDACTED] who states that "[b]ecause of the positions I hold at Queens College of the City University of New York, I have the authority to evaluate whether the school is to grant college level credit for experience, training, and /or courses taken at other U.S. or international universities." The evaluation provided by [REDACTED] determine the beneficiary's credentials to be "the equivalent of a Doctor of Medicine degree from an accredited institution of higher education in the United States," based on the years, hours, nature, and grades earned in academic coursework and the credibility of the Universidad de Zaragoza. The petitioner also submits a certified translation of the beneficiary's transcripts for her medical degree showing coursework in such areas as Physiology, Biochemistry, Anatomy, Embryology, Microbiology, Parasitology, Psychology, Pathology, Gynecology, Ophthalmology, Pediatrics, Puericulture, Otorhynolaryngology, Psychiatry, Hygiene, Dermatology, Venerology, and Urology. The petitioner also submits a translated employment contract for the beneficiary's employment as medical director of a health clinic in Haiti and a copy of her physician assistant license valid until January 31, 2004 issued by Florida's Department of Health.

Subsequently, counsel submits additional evidence in the form of an additional credential evaluation also conducted by Morningside Evaluations and Consulting on June 16, 2003 and signed by [REDACTED] who states that based upon the beneficiary's educational credentials from the Universidad de Zaragoza, "[the beneficiary] has attained the equivalent of a Bachelor of Science in Medicine degree and at least two years of training as a physicians assistant from an accredited institution of higher education in the United States." The petitioner also submits printed pages from the National Commission on Certification of Physician Assistants website that counsel asserts evidences the beneficiary's Board eligibility for certification. The pages provide information about educational programs and certification timeframes. No evidence concerning the beneficiary's pursuit of the educational programs or various examinations was provided.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), guiding evidentiary requirements for "professionals," 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 regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for “skilled workers,” states the following:

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.

For the “professional category,” the beneficiary must also show evidence of a “United States baccalaureate degree or a foreign equivalent degree.” For petitioners seeking to qualify a beneficiary for the third preference “skilled worker” category, the petitioner must produce evidence that the beneficiary meets the “educational, training or experience, and any other requirements of the individual labor certification” as clearly directed by the plain meaning of the regulatory provision.

In evaluating the beneficiary’s qualifications, Citizenship and Immigration Services (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 petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree of science (four years in college) in science; two years of training as a physician’s assistant; a Florida physician assistant’s license; and certification or eligibility for certification by the National Commission on Certification of Physician Assistants (NCCPA).

The credential evaluation submitted on appeal is rejected as incompetent evidence by the AAO. Correspondence from Queens College indicates that [REDACTED] does not have the authority to grant academic credit for either the beneficiary’s academic studies or for her work experiences. In December 2001, CIS received correspondence from [REDACTED] Assistant Vice President and Special Counsel to the President, Queens College.<sup>2</sup> [REDACTED] letter stated that [REDACTED] did not have the authority to grant college-level credit for foreign university studies and then added:

The only college credit that may be given at Queens College for prior work experience and training is that determined to be its equivalent by the Adult Collegiate Education (ACE) Program after a very specific process of portfolio review. It is the ACE program, not an individual faculty member, which has the authority to grant credit.

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<sup>2</sup> Letter to [REDACTED] Immigration and Naturalization Service, Texas Service Center, from [REDACTED] Assistant Vice President and Special Counsel to the President, dated November 7, 2001, 2 pages.

CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a United States baccalaureate degree. *Id.* at 245. *Shah* applies regardless of whether or not the petition was filed as a skilled worker or professional.

The regulations define a third preference category "professional" as 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." See 8 C.F.R. § 204.5(l)(2). The regulation uses a singular description of 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.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a "skilled worker," the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a bachelor's degree, or an equivalent foreign degree. The petitioner simply cannot qualify the beneficiary as a skilled worker without proving the beneficiary meets its additional requirement on the Form ETA-750 of an equivalent foreign degree to a U.S. bachelor's degree.

If supported by a proper credentials evaluation, a four-year baccalaureate degree from Haiti or Spain could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, the record reflects that the beneficiary's formal education consists of greater than a four-year curriculum at one university culminating in a "Medical Doctor" degree with years of coursework in science-related subjects. The AAO is loath to determine that the beneficiary does not have the equivalent of a baccalaureate degree in science, majoring in science, with her ample studies in courses falling under the science rubric and a degree in medicine. Thus, this portion of the director's decision will be withdrawn. The AAO determines that the beneficiary has the equivalent of a four-year bachelor of science degree as required by the proffered position.

Likewise, the record of proceeding reflects that the beneficiary has sustained a license to practice as a physician assistant in the state of Florida, and the AAO therefore determines that the beneficiary has a current State of Florida Physician Assistant license as required by the proffered position and withdraws the portion of the director's decision pertaining to that issue. Additionally, the petitioner submitted a letter with the initial petition evidencing the beneficiary's employment as a physician assistant since 1992. The letter provides the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien in accordance with the regulation at 8 C.F.R. § 204.5(l)(3).<sup>3</sup> Thus, the petitioner's letter is sufficient evidence of the beneficiary's two years

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<sup>3</sup> The regulation at 8 C.F.R. § 204.5(l)(3) provides:

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers

of training as a physician assistant prior to filing the petition and the director's decision is withdrawn pertaining to that issue.

Finally, the AAO undertook to decipher whether or not the beneficiary meets the requirement for NCCPA board eligibility as counsel asserts without explanation or connection of NCCPA board eligibility to the beneficiary's background. The evidence in the record of proceeding seems to indicate that the beneficiary initiated a process pertaining to obtaining NCCPA certification and obtained temporary certification from the state of Florida's Department of Health in 1992 which was still active in August 1998. However, no evidence was provided concerning the beneficiary's correspondence or application to NCCPA, a letter of eligibility from NCCPA, or scores from the various examinations required for NCCPA certification. No evidence was provided to clarify the nexus between the Florida Department of Health, the beneficiary's state-issued physician assistant license, and NCCPA eligibility. The materials provided by counsel on appeal indicate that the beneficiary could have obtained a letter proving eligibility for NCCPA certification from NCCPA. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *See Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972). The beneficiary may be eligible to seek NCCPA certification, but the record of proceeding does not contain a preponderance of evidence required for the petitioner to meet its burden of proof.<sup>4</sup> Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses NCCPA board certification or eligibility as required by the terms of the labor certification.

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. The director's decision is withdrawn in part and sustained in part.

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giving the name, address, 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.

<sup>4</sup> The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).