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U.S. Citizenship
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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER
LIN 02 253 50777

Date: JAN 25 2005

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:



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 preference 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 technology services firm. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. 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 statement and additional evidence.

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.

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 granting 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.

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. The Form ETA 750 states that the proffered position requires a Bachelor’s Degree or equivalent” in “Computer Science, MIS, Eng., or any scientific field.”

With the petition, counsel submitted a letter, dated July 25, 2002, from the petitioner’s human resources manager. That letter states that in 1996 the beneficiary graduated from the Northern Alberta Institute of Technology in Canada with a degree in Computer Systems Technology.

As evidence of that claim counsel provided a photocopy of a diploma awarded by the Northern Alberta Institute of Technology to the beneficiary. That diploma, dated June 13, 1996, states that the beneficiary completed a prescribed program of studies in computer systems and technology.

Counsel also submitted a photocopy of another diploma, also awarded to the beneficiary by Northern Alberta Institute of Technology. That diploma, dated April 29, 1988, states that the beneficiary completed a prescribed program of studies in accounting.

Further, counsel submitted the report, dated January 29, 2001, of an educational evaluation service. That report states that the beneficiary's two degrees are the equivalent of over two years of study at an accredited U.S. University. That report also states that the petitioner's education plus his experience are the equivalent of a bachelor's degree in computer science earned at a U.S. University.

Further still, that report states that the evaluator considered a certificate in Effective GUI Design from the Visual Client/Server Solutions, awarded in 1995, and a certificate in Introduction to Visual Basic from the Interprovincial Pipe Line Inc., awarded in 1993, in producing that report. Copies of those alleged certificates were not provided to CIS.

On January 31, 2003, the Nebraska Service Center, issued a Request for Evidence in this matter. The Service Center did not, however, request any evidence pertinent to the beneficiary's education. No evidence submitted in response to that request is relevant to the beneficiary's education.

The director determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree, and, on June 4, 2003, denied the petition.

On appeal, counsel asserts that additional information discovered after the petition was submitted establishes that based upon formal education alone the beneficiary has the educational equivalent of a bachelor's degree in computer information systems.

In support of that assertion, counsel submits another educational evaluation. This second evaluation, from a different evaluation service, states that the beneficiary's education alone is the equivalent of a bachelor's degree. The evaluation referred to coursework at Beiercrest Bible College in Canada.¹

Counsel's assertion on appeal, supported by the conclusion of the educational evaluator, is that the petitioner's education, in the aggregate, is the equivalent of a bachelor's degree in computer information systems. In that aggregate, however, the evaluator included coursework at Beiercrest Bible College. The record contains no diploma or transcript from Beiercrest Bible College, nor any other evidence of the beneficiary's claimed coursework there.

The AAO may, in its discretion, use as advisory opinions statements submitted as expert testimony in its assessment of the evidence and the conclusions to be drawn from it. Matter of Caron International, 19 I&N

¹ This office questions whether the beneficiary's previous coursework or the second evaluation can qualify as newly discovered evidence, as counsel characterizes it.

Dec. 791 (Comm. 1988). Such advisory opinions, however, are no substitute for evidence. The record contains no documentary evidence to demonstrate that the beneficiary attended Beiercrest Bible College. Unsupported assertions are insufficient to sustain the burden of proof in this matter.

The evidence demonstrates that the beneficiary attended Northern Alberta Institute of Technology. The evidence shows that the petitioner earned a degree in computer systems and technology and one in accounting. The evidence shows that those degrees are equivalent to over two years of study at an accredited U.S. University. A United States bachelor's degree generally requires four years of education. *Matter of Shah*, 17, I&N Dec. 244 (Reg. Comm. 1977). Neither of those diplomas, therefore, can be the equivalent of a U.S. bachelor's degree.

The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has a United States baccalaureate 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.