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U.S. Citizenship
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FILE: [REDACTED]
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Office: NEBRASKA SERVICE CENTER

Date: JUN 10 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 sustained.

The petitioner is a restaurant holding company. It seeks to employ the beneficiary permanently in the United States as a fast-food restaurant manager. 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 requisite experience, or the same number of years education in place of the experience, as stated on the labor certification petition, and the director denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

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 unavailable in the United States.

8 CFR § 204.5(l)(3)(ii) states, in pertinent part:

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

Eligibility in this matter hinges on the petitioner demonstrating that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date of the petition is the date the request for labor certification was accepted for processing by any office within the employment system of the Department of Labor. Here, the request for labor certification was accepted for processing on April 26, 2001. The labor certification states that the position requires two years experience and provides, "Years of education in Commerce or Business Administration can substitute for years of experience."

With the petition filed on May 22, 2003, counsel submitted:

- A Form G-28 on the petitioner's behalf;

- An approved Form ETA 750 labor certification application, showing a priority date of April 26, 2001, a certification date of March 28, 2003, and a proffered wage of \$32,624 for working full time in the proffered position;
- A July 17, 2002 decision granting deferred action as long as circumstances warrant;
- A copy of the beneficiary's college transcripts; and,
- The petitioner's Form 1120 income tax returns for its fiscal years ending August 31, 2001 and August 31, 2002.

On September 17, 2003, the director requested, among other things, completed college transcripts showing the beneficiary met the education requirements of the labor certification application, specifically asking for a "complete copy of the beneficiary's college transcripts."

In response, on November 3, 2003, counsel submitted, among other things:

- Affidavits and documents purporting to show the petitioner's unsuccessful effort to obtain the requested college transcripts; and,
- The affidavits of two contemporary classmates of the beneficiary confirming that the beneficiary's attendance at college as she had stated.

On December 18, 2003, the director denied the petition, finding that the evidence submitted did not demonstrate that the beneficiary has the requisite two years of salient work experience or of the equivalent educational coursework. Specifically, the director found that the petitioner's initial submission of a photocopied college transcript and a provisional certificate from the college "do not list the beneficiary's exact dates of attendance" to show she had accumulated at least two years of pertinent education. The director also found insufficient an affidavit showing efforts made to obtain complete transcripts and two other affidavits from contemporary classmates of the beneficiary who recalled her attendance at the college during the two years claimed.

On appeal, counsel submitted a brief on January 9, 2004, supplemented with additional evidence on July 1, 2004, of:

- A December 29, 2003 credentials report from Morningside Evaluations and Consulting of New York City, evaluating "copies of the original documents provided by [the beneficiary] and presented by [the beneficiary] to be authentic and true copies of those documents;" and,
- An April 2, 2004 certificate for a Bachelor of Commerce degree, issued September 5, 2003, from Ranchi University, reciting that the beneficiary had passed the degree examination in January 1983.

The evaluator asserts that Ranchi University "is an accredited Indian institution of higher learning that issues a Bachelor of Commerce degree upon a student's completion of three years academic work."

Citizenship and Immigration Services (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).

Here counsel has tried to show attempts in July of 2003 to obtain the beneficiary's coursework transcript from Ranchi College. Failing that, he obtained an evaluation on December 29, 2003, based upon original records from the college concluding that, based on "the credibility of Ranchi University and the number of years of coursework," along with the beneficiary's representations, the beneficiary has the equivalent of three years of academic coursework from an accredited institution of higher education in the United States.

Rendered without benefit of the certificate for a Bachelor of Commerce degree, the evaluation has less than full evidentiary weight. However, on April 2, 2004, Ranchi University issued a certificate stating that it had granted the beneficiary a Bachelor of Commerce degree on September 5, 2003, based on her passing the relevant examination in January 1983. This latest evidence confirms what the petitioner had initially maintained.

The evidence submitted does demonstrate credibly that the beneficiary has the equivalent of two years of experience in the form of education required by the on the Form ETA 750. Therefore, the petitioner has established that the beneficiary is eligible for the proffered position.

This office notes that the ETA 750 only requires two years of experience or education, so the delay in awarding the degree certificate until 2003 does not mean the beneficiary did not have the qualification on or before the priority date. Rather, the certificate and evaluator show that the beneficiary met the requirements as of the priority date.

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 sustained. The petition is approved.