

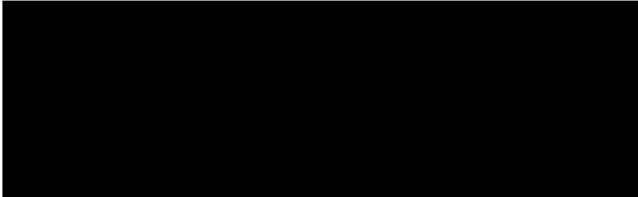
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**U.S. Citizenship
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Services**

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FILE: EAC 04 050 50326 Office: VERMONT SERVICE CENTER Date: APR 04 2006

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, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a computer software translation company. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification was 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.

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. Here, the Form ETA 750 was accepted for processing on October 31, 2002. The Form ETA 750 states that the proffered position requires a four-year “Bachelor of Science or equivalent” college degree in Computer Science with two years job experience in “software localization.”¹

With the petition,² counsel submitted:

¹ We note that on July 7, 2003, the Department of Labor approved an amendment attached to Part 14 of the ETA 750 declaring that a job candidate could meet the minimum requirements of Part 14, despite not having the required bachelor’s degree, if “a recognized credentials evaluation firm” assessed a combination of education and experience to be the equivalent of the degree.

²The petition indicates the proffered position would be in Pittsburg, Pennsylvania.

- A November 23, 1999 credentials evaluation by the Foundation For [REDACTED] Inc., Bothell, Washington, that found the beneficiary's education and work experience combined to be the equivalent of "a bachelor's degree in computer science from an accredited college in the United States;"
- A diploma from Montgomery College, Maryland for an Associate of Arts degree In Computer Science And Technologies, Business Programming Option dated January 3, 1992;
- A July 8, 1999 translation of a diploma in Data Processing Technology from a Rio de Janeiro, Brazil college, dated July 8, 1999;
- A course transcript; and,
- Four letters of experience.

On July 20, 2004, the director requested additional evidence pertinent to the beneficiary's education. The Service Center also specifically requested another credentials evaluation based solely upon the beneficiary's education.

In response, counsel submitted a letter conceding that the beneficiary would not meet the formal educational requirements for classification as a professional, and stating that the reason for submitting the evaluation was to show the beneficiary had the equivalent, in education and experience, of a bachelor's degree.

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 October 21, 2004, denied the petition. In making that decision, the director stated:

Although the evaluation report continues to evaluate the combination of the beneficiary's educational background and many years of employment experience to be the equivalent of an individual with a bachelor's degree in computer science from an accredited college or university in the United States, there are no provisions on the labor certification for the acceptance of less than a bachelor's degree.

On appeal, counsel again asserts that the director ignored the petitioner's request that the director classify the beneficiary as a skilled worker, not as a professional.

To determine whether a beneficiary is eligible for a third preference immigrant visa, Citizenship and Immigration Services (CIS), formerly the Service or INS, must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. 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, *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, we again note that the petitioner revised the ETA 750, which the Department of Labor approved on July 7, 2003, to allow for a credentials evaluation finding a candidate's job experience and education to be the equivalent of the required Bachelor of Science in Computer Science, as previously stated. In general, CIS will not accept a degree equivalency when a labor certification plainly and expressly requires a specific degree. Nonetheless, in this case the labor certification provided an alternative method for establishing the beneficiary's educational qualifications. To determine whether a beneficiary is eligible for a third-preference

immigrant visa, CIS must ascertain whether the alien is in fact qualified for the certified job. 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.

In spite the alternative provided in the ETA 750, the director found that "there are no provisions on the labor certification for the acceptance of less than a bachelor's degree." Contrary to such an assessment, we find that the July 7, 2003 attachment to the ETA 750 amends Part 14 of the ETA 750, and that the beneficiary meets the educational qualifications of the ETA 750 by virtue of the November 23, 1999 credentials evaluation, which found that the beneficiary had the equivalent of a bachelor's degree in Computer Science.

The petitioner's evidence is sufficient to demonstrate that the beneficiary's qualifications match those set forth on the ETA 750. The instant petition, submitted pursuant to 8 C.F.R. § 204.5(l), will be approved, accordingly.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.