

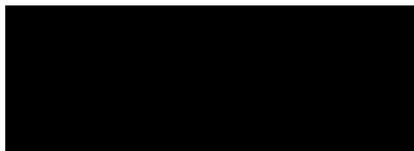
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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B6

DATE: APR 12 2012

Office: TEXAS SERVICE CENTER FILE:



IN RE:

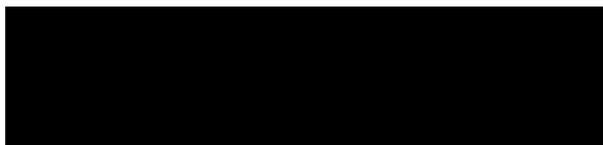
Petitioner:

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:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, 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. The appeal will be sustained. The petition will be approved.

The petitioner is a software development and consulting firm. 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 approved by the Department of Labor (DOL), accompanied the petition. The director determined that the petitioner had not established that the beneficiary possessed the educational credentials required by the terms of the labor certification and denied the petition, accordingly.

On appeal, the petitioner, through counsel, submits additional evidence and contends that the beneficiary's credentials satisfied the terms of the Form ETA 750 and that the petition should be approved.

The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).¹

The petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date which is the day the Form ETA 750 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on March 28, 2005, which establishes the priority date. The Immigrant Petition for Alien Worker (Form I-140) was filed on May 8, 2007.

The job duties of a software engineer are set forth on Item 13 of the ETA 750. The job duties are described as follows:

Design and implement innovative technology solutions. Responsible for the full product life cycle including software design, systems architecture development, code implementation, testing, integration and documentation of systems operations for financial/banking and other commercial business applications systems in a multi-hardware/multi-software environment applying knowledge of the following advanced and cutting edge technologies: VB, ASP.NET, SQL

¹Section 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. 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.

Server, VS.NET, Crystal Reports, HTML, Oracle, Access VB.NET, VBScript.
Express complex technical concepts in business terms.

The sole issue on appeal is whether the applicant has a Bachelor's or equivalent in Computer Science, Computer Information Systems, Management Information Systems or Engineering as required by the labor certification. As described on the labor certification, the position may be properly classified as a professional but may also be considered as a skilled worker.

In this case, the AAO has consulted members of the American Association of Collegiate Registrars and Admissions Officers (AACRAO), who administer its Electronic Database for Global Education (EDGE).² They examined the beneficiary's credentials, specifically his three-year

[REDACTED]

²According to its website, "AACRAO is a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries around the world. See *An Author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

In *Confluence Intern., Inc. v. Holder*, 2009 WL 825793 (D.Minn. March 27, 2009), the court determined that the AAO provided a rational explanation for its reliance on information provided by AACRAO to support its decision. In *Tisco Group, Inc. v. Napolitano*, 2010 WL 3464314 (E.D.Mich. August 30, 2010), the court found that USCIS had properly weighed the evaluations submitted and the information obtained from EDGE to conclude that the alien's three-year foreign "baccalaureate" and foreign "Master's" degree were only comparable to a U.S. bachelor's degree. In *Sunshine Rehab Services, Inc.* 2010 WL 3325442 (E.D.Mich. August 20, 2010), the court upheld a USCIS determination that the alien's three-year bachelor's degree was not a foreign equivalent degree to a U.S. bachelor's degree. Specifically, the court concluded that USCIS was entitled to prefer the information in EDGE and did not abuse its discretion in reaching its conclusion. The court also noted that the labor certification itself required a degree and did not allow for the combination of education and experience.

³ EDGE discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE does provide that a Postgraduate Diploma following a three-year bachelor's degree "represents attainment of a level of education comparable to a

The AACRAO evaluators determined that the beneficiary possesses education comparable to a U.S. Bachelor's degree with a double major. Therefore, the petitioner has established that the beneficiary has the educational credentials required by the terms of the labor certification as he may be deemed to possess a Bachelor's degree in Chemistry and Computer Information Systems.

Based on the foregoing, the director's decision will be withdrawn, and the petition will be approved in the professional visa classification.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

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