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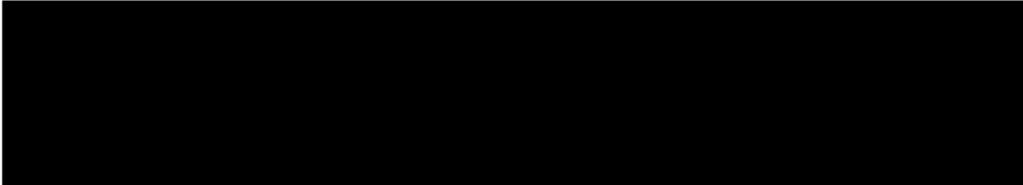
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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U.S. Citizenship
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: FEB 25 2008

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Petitioner:

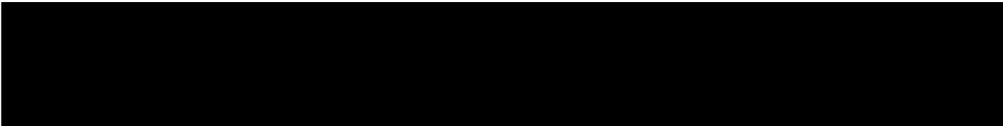


Beneficiary:

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a designer, fabricator and installer of granite countertops. It seeks to employ the beneficiary permanently in the United States as a human resources director pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a Master's degree or a foreign equivalent degree.

On appeal, counsel submits a brief and additional evidence. For the reasons discussed below, we uphold the director's decision.

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree." *Id.*

The beneficiary possesses a foreign bachelor's degree and several postgraduate certificates. The issue is whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification.

As noted above, the ETA Form 9089 in this matter is certified by DOL. DOL's role is limited to determining whether there are sufficient workers who are able, willing, qualified and available and whether the employment of the alien will adversely affect the wages and working conditions of workers in the United States similarly employed. Section 212(a)(5)(A)(i) of the Act; 20 C.F.R. § 656.1(a).

It is significant that none of the above inquiries assigned to DOL, or the remaining regulations implementing these duties under 20 C.F.R. § 656, involve a determination as to whether or not the alien is qualified for a specific immigrant classification or even the job offered. This fact has not gone unnoticed by federal circuit courts. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983).¹

¹ *But cf. Hoosier Care, Inc. v. Chertoff*, 482 F. 3d 987 (7th Cir. 2007) relating to a lesser classification than the one involved in this matter and relying on the regulation at 8 C.F.R. § 204.5(l)(4), a provision that does not relate to the classification sought here.

Relying in part on *Madany*, 696 F.2d at 1008, the U.S. Federal Court of Appeals for the Ninth Circuit (Ninth Circuit) stated:

[I]t appears that the DOL is responsible only for determining the availability of suitable American workers for a job and the impact of alien employment upon the domestic labor market. It does not appear that the DOL's role extends to determining if the alien is qualified for the job for which he seeks sixth preference status. That determination appears to be delegated to the INS under section 204(b), 8 U.S.C. § 1154(b), as one of the determinations incident to the INS's decision whether the alien is entitled to sixth preference status.

K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006, 1008 (9th Cir. 1983). The court relied on an amicus brief from DOL that stated the following:

The labor certification made by the Secretary of Labor ... pursuant to section 212(a)[(5)] of the ... [Act] ... is binding as to the findings of whether there are able, willing, qualified, and available United States workers for the job offered to the alien, and whether employment of the alien under the terms set by the employer would adversely affect the wages and working conditions of similarly employed United States workers. *The labor certification in no way indicates that the alien offered the certified job opportunity is qualified (or not qualified) to perform the duties of that job.*

(Emphasis added.) *Id.* at 1009. The Ninth Circuit, citing *K.R.K. Irvine, Inc.*, 699 F.2d at 1006, revisited this issue, stating: "The INS, therefore, may make a de novo determination of whether the alien is in fact qualified to fill the certified job offer." *Tongatapu*, 736 F. 2d at 1309.

When determining whether a beneficiary is eligible for a preference immigrant visa, CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1015. CIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which CIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. *See Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). CIS's interpretation of the job's requirements, as stated on the labor certification must involve reading and applying *the plain language* of the alien employment certification application form. *See id.* at 834. CIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification that DOL has formally issued or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

In this matter, Part H, line 4, of the labor certification reflects that a Master's Degree in Human Resources is the minimum level of education required. Line 8 reflects that no combination of education or experience is acceptable in the alternative. Line 9 reflects that a foreign educational equivalent is acceptable. Thus, the petitioner must demonstrate that the beneficiary has a Master's Degree in Human Resources or a foreign educational equivalent.

The beneficiary received her *Licenciatura Plena* in the field of Education on April 25, 1996 from Centro de Ensino Unificado de Brasilia (CEUB). The beneficiary also received a certificate of graduation for post-baccalaureate "lato sensu" studies in Human Resource Management (October 2, 2002)² and reengineering in human resources (July 31, 2002).³ Both certificates were issued by the Universidade Candido Mendes (UCAM). In addition, the beneficiary received two other certificates of graduation for post-baccalaureate programs in education in November 2002.

The petitioner initially submitted an evaluation of the beneficiary's education from Silvergate Evaluations, Inc. The evaluation concludes that by completing her *Licenciatura Plena*, the beneficiary "satisfied requirements substantially similar to those required toward the completion of academic studies leading to a Bachelor's Degree in Education from an accredited institution of higher education in the United States." The evaluation continues:

As part of the requirements leading to the Post Graduate Diploma in Reengineering in Human Resources, [the beneficiary] completed one year of specialized courses in her area of concentration, Reengineering in Human Resources, as well as in other related subjects. As part of the requirements leading to the Post Graduate Diploma in Human Resources Management, [the beneficiary] completed one year of specialized courses in her area of concentration, Human Resources Management, as well as in other related subjects.

Upon reviewing [the beneficiary's] attainment of a Post Graduate Diploma in Reengineering in Human Resources and a Post Graduate Diploma in Human Resources Management from *Universidade Candido Mendes (UCAM)*, it becomes apparent that [the beneficiary] has satisfied requirements substantially similar to those required toward the completion of academic studies leading to a Master's Degree in Human Resources Management from an accredited institution of higher education in the United States.

The evaluation concludes that the beneficiary has "attained the equivalent of a Bachelor's Degree in Education and a Master's Degree in Human Resources Management from an accredited institution of higher education in the United States."

In response to the director's request for additional evidence, counsel asserts that the "operative inquiry, is whether 2 Postgraduate Diplomas requiring 360 hours each of course (720 hours total)

² According to the date on the foreign language document.

³ According to the date on the foreign language document.

work is equivalent to 1 U.S. Master's Degree, and therefore whether the credential evaluation submitted by the beneficiary is 'reasonable.'" The petitioner submitted evidence that at least three U.S. universities do not require more than 720 course hours for a Master's Degree in Human Resource related areas.

The director quoted language from a National Association for Foreign Student Affairs (NAFSA) publication and concluded that *lato sensu* education could not be equated to a Master's Degree.

On appeal, the petitioner submits materials on Brazilian education from *A Global Guide to Management Education – 2006*. The author or publisher of this publication is unknown. Some of the information in this publication supports the director's conclusion that a *lato sensu* credential is not the foreign educational equivalent of a U.S. Master's Degree. For example, the materials state at 306-307:

Two types of graduate programs are recognized by the Brazilian Ministry of Education. *Lato sensu* or "specialization" courses award recognized certificates and require at least 360 hours of course work or approximately two years. These courses are characterized as "continuing education." *Lato sensu* courses require an undergraduate degree to enter and do not require a thesis to graduate. *Stricto sensu* courses award a Master's or Doctorate degree. Approximately two years of study and a thesis are required for a Master's degree and approximately four years of study, including a dissertation, are required for a Doctorate.

The materials further state on page 307 that a "US-Style MBA (that requires no research thesis) is considered a *lato sensu* program, i.e. it is considered a specialization certificate and not a Master's degree in Brazil." A reading of the complete chapter submitted, however, reveals that the "US-Style MBA" referenced is one provided by a foreign university in Brazil, not by a regionally accredited university in the United States.

Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Regl. Commr. 1972)). The evaluation submitted is not consistent with the published materials submitted on appeal. Thus, contrary to counsel's assertion on appeal, there is a basis to question the evaluation.

Moreover, we disagree with counsel that the "operative inquiry" is whether the beneficiary, while enrolled in two separate *lato sensu* programs, completed the same number of course credits required for a U.S. Master's degree. Where the analysis of the beneficiary's credentials relies on a

combination of multiple lesser degrees, the result is the “equivalent” number of course credits for a Master’s degree rather than a “foreign educational equivalent” to a U.S. Master’s degree.

The beneficiary does not meet the job requirements on the labor certification. For this reason, the petition 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.