

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
and Immigration
Services

PUBLIC COPY

B5



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: **MAY 06 2008**
LIN 06 200 52822

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

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:
[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, 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 sustained; the petition will be approved.

The petitioner is a financial institution. It seeks to employ the beneficiary permanently in the United States as a data analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). 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. 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 from an "accredited" or "affiliated" institution.

On appeal, counsel asserts that the beneficiary has the foreign equivalent of a U.S. Master's degree and submits evidence regarding the significance of "deemed" universities. We find that the petitioner has demonstrated that the beneficiary has an advanced degree from a "deemed" university, which is equivalent to accreditation.

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." *Id.*

The beneficiary possesses a foreign four-year Bachelor of Engineering degree and a two-year Post Graduate Diploma in Management and Information Technology from the Indian Institute of Information Technology and Management, Gwalior. Thus, the issue is whether this education can serve to meet the job requirements certified by DOL.

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).

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.

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 is the minimum level of education required. Line 6 reflects that no experience is necessary. 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.

The petitioner initially submitted a credential's evaluation from Washington Evaluation Service. The evaluation concludes:

The Post-Graduate Diploma in Management and Information Technology is recognized by the Indian Government as being academically equivalent to a Master's degree.

The director concluded that the diploma could not be considered a Master's degree from an accredited or affiliated university.

On appeal, the petitioner submitted new evaluations and materials about the Indian Institute of Information Technology and Management, Gwalior, confirming that it is a "deemed" university. The petitioner also submitted the University Grants Commission (UGC) Act providing the authority to designate "deemed" universities.

As noted by the director, 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 opinion is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817, 820 (Comm., 1988).

The petitioner has completed six years of tertiary education, *all of which was completed at a college or university*. The beneficiary earned a four-year baccalaureate and a two-year postgraduate diploma from a university designated as "deemed" by the UGC. The petitioner has adequately demonstrated the UGC is a central government appointed commission in India that evaluates universities for the determination and maintenance of standards of teaching, examination and research at universities and regulates educational standards. Specifically, section 2(f) of the UGC Act reflects that an institution may be recognized by the UGC in accordance with the regulations made under the Act. In addition, for an institution designated as "deemed," section 3 of the UGC Act provides that all of the provisions of the UGC Act "shall apply to such institution as if it were a University within the meaning of clause (f) of section 2." Finally, according to the Internet materials submitted, India has 18 central universities and 99 institutions declared "deemed" universities upon recommendation by the UGC. Thus, we are persuaded that the beneficiary's final credential, representing the culmination of six years of tertiary education at a college or university, is a foreign equivalent degree to a U.S. Master's degree.

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.