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U.S. Citizenship
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FILE:

[REDACTED]
SRC 09 191 50345

Office: TEXAS SERVICE CENTER

Date: AUG 05 2009

IN RE:

Petitioner:
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.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen, as required by 8 C.F.R. § 103.5(a)(1)(i).

John F. Grissom, Acting Chief
Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition. The petitioner appealed the decision. Treating the appeal as a motion to reconsider, the director withdrew the denial, approved the petition, and certified the approval to the Administrative Appeals Office (AAO). The director's decision will be affirmed. The petition will be approved.

The petitioner claims to provide healthcare management services. It seeks to employ the beneficiary permanently in the United States as an application developer. The petitioner requests classification of the beneficiary as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by 8 C.F.R. § 204.5(k)(4), the petition is accompanied by an ETA Form 9089, Application for Alien Employment Certification (labor certification), certified by the Department of Labor (DOL).

In initially denying the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. On appeal, counsel claimed that the director erroneously applied the third employment-based preference classification and failed to consider the beneficiary's master's degree. The director treated the appeal as a motion to reconsider pursuant to 8 C.F.R. § 103.3(a)(2)(iii). On June 10, 2009, the director withdrew its denial and approved the petition. The director found that the beneficiary possessed the foreign equivalent of a U.S. master's degree and therefore qualified for the job offered as a member of the professions holding an advanced degree pursuant to section 203(b)(2) of the Act. The director also certified the approval to the AAO pursuant to 8 C.F.R. § 103.4(a) to address the issue of whether the beneficiary's master's degree is the foreign equivalent of a U.S. master's degree.

Certifications by regional service center directors may be made to the AAO "when a case involves an unusually complex or novel issue of law or fact." 8 C.F.R. § 103.4(a)(1). The regulation at 8 C.F.R. § 103.4(a)(4) states: "*Initial decision.* A case within the appellate jurisdiction of the Associate Commissioner, Examinations, or for which there is no appeal procedure may be certified only after an initial decision." The following subsection of that same regulation states as follows: "*Certification to [AAO].* A case described in paragraph (a)(4) of this section may be certified to the [AAO]." 8 C.F.R. § 103.4(a)(5).

The AAO's jurisdiction is limited to the authority specifically granted to it by the Secretary of the United States Department of Homeland Security. *See* DHS Delegation No. 0150.1 (effective March 1, 2003); *see also* 8 C.F.R. § 2.1 (2005 ed.). Pursuant to that delegation, the AAO's jurisdiction is limited to those matters described at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003). *See* DHS Delegation Number 0150.1(U) *supra*; 8 C.F.R. § 103.3(a)(iv) (2005 ed.).

The regulation at 8 C.F.R. § 103.1(f)(3)(iii) (as in effect on February 28, 2003) states:

(iii) Appellate Authorities. In addition, the Associate Commissioner for Examinations exercises appellate jurisdiction over decisions on;

(B) Petitions for immigrant visa classification based on employment or as a special immigrant or entrepreneur under Secs. 204.5 and 204.6 of this chapter except when the denial of the petition is based upon lack of a certification by the Secretary of Labor under section 212(a)(5)(A) of the Act;

Pursuant to the delegation cited above, the AAO exercises the appellate jurisdiction formerly exercised by the Associate Commissioner for Examinations.

In the instant case, the petition was approved by the director, therefore the decision does not fall within the exception clause in subparagraph (B) in the regulation quoted above, which pertains only to a denial based upon a lack of a certification by the Secretary of Labor. The approval decision therefore is within the appellate jurisdiction of the AAO. Therefore, the certification of the denial decision is authorized by the regulation at 8 C.F.R. § 103.4(a)(5).

On the petition, the petitioner claimed to have been established in 1974, to have a gross annual income of \$71.6 billion, and to employ 55,000 workers.

The priority date of the instant petition is June 1, 2007, the date the labor certification was filed with the DOL. The proffered wage stated on the labor certification is \$61,714.00 per year. The labor certification states that the position requires, *inter alia*, a master's degree in computer science, computer applications or related field, and two years of experience as an application developer, junior programmer analyst, programmer analyst, or related occupation. On the labor certification, signed by the beneficiary on June 13, 2007, the beneficiary claimed to have worked for the petitioner since December 24, 2006.

The primary issue is whether the beneficiary's three-year master's degree, which followed the completion of a three-year bachelor's degree, is the foreign equivalent of a U.S. master's degree. This issue is relevant to the determination of whether the beneficiary is eligible for the employment-based immigrant visa classification sought, and to whether the beneficiary satisfies the minimum requirements of the job offered as set forth in the labor certification.

Whether the Beneficiary is Eligible for Classification as a Member of the Professions Holding an Advanced Degree

The petition seeks to classify the beneficiary as a member of the professions holding an advanced degree. Section 203(b) of the Act states:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit

prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

In order to obtain an approval of the advanced degree professional petition, the petitioner must establish that the offered position requires a member of professions holding an advanced degree, and that the beneficiary possesses an advanced degree.

Whether the Position Requires a Member of the Professions Holding an Advanced Degree

The regulation at 8 C.F.R. § 204.5(k)(4) states that, in order to establish that the offered position qualifies for the requested immigrant classification, "[t]he job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent." If the job itself does not require an advanced degree professional, the petition must be denied.

The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as either a "United States academic or professional degree or a foreign equivalent degree above that of baccalaureate." The regulation further states that 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 same regulation defines "profession" as "one of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation." *Id.* Section 101(a)(32) of the Act states that the term "profession" includes, but is not limited to, "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries."

Accordingly, as required by 8 C.F.R. § 204.5(k)(4), U.S. Citizenship and Immigration Services (USCIS) will look to the labor certification to determine whether the offered position requires both an individual with an advanced degree and a member of the professions.

Part H of the labor certification describes the minimum education, training and experience required to perform the duties of the job offered. In the instant case, the labor certification states that the job offered requires a master's degree in computer science, computer applications, or related field. Accordingly, the position requires an individual with an advanced degree.

The offered position also requires a member of the professions. An application developer is not one of the occupations listed at Section 101(a)(32) of the Act. Therefore, the analysis of whether the job requires a professional is based on whether a bachelor's degree is the minimum requirement for entry into the occupation. *See* 8 C.F.R. § 204.5(k)(2). Further, USCIS will also determine whether a baccalaureate degree in a specific field is required for entry into that particular profession, and, if so, whether the labor certification requires such a degree.

On the labor certification, the offered position was assigned the Standard Occupational Classification code 15-1031, Computer Software Engineers, Applications. The O*NET online database¹ states that the occupation of Computer Software Engineers, Applications falls within Job Zone Four.² According to O*NET, most of occupations in Job Zone Four require a four-year bachelor's degree.

Further, the entry for Computer Software Engineers in the Occupational Outlook Handbook (OOH) states:³

Most employers prefer applicants who have at least a bachelor's degree and broad knowledge of, and experience with, a variety of computer systems and technologies. The usual college major for applications software engineers is computer science or software engineering. Systems software engineers often study computer science or computer information systems. Graduate degrees are preferred for some of the more complex jobs. In 2006, about 80 percent of workers had a bachelor's degree or higher. Academic programs in software engineering may offer the program as a degree option or in conjunction with computer science degrees. Because of increasing emphasis on computer security, software engineers with advanced degrees in areas such as mathematics and systems design will be sought after by software developers, government agencies, and consulting firms.

Therefore, the job offered requires a bachelor's degree as the minimum requirement for entry into the occupation, and the relevant fields of study required for entry into the occupation corresponds with the required fields of study set forth in the labor certification.

It is concluded that the petitioner has established that the job offered requires a member of the professions holding an advanced degree.

¹O*NET, located at <http://online.onetcenter.org>, is described as "the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations."

²Summary Report for 15-1031.00 at <http://online.onetcenter.org/link/summary/15-1031.00> (accessed July 10, 2009).

³Accessed at www.bls.gov/oco/ocos267.htm on June 16, 2009. The OOH is a nationally recognized source of career information published by the DOL's Bureau of Labor Statistics.

Whether the Beneficiary is a Member of the Professions Holding an Advanced Degree

The petitioner must also establish that the beneficiary possesses an advanced degree or a baccalaureate degree followed by at least five years of progressive experience in the specialty. *See* 8 C.F.R. § 204.5(k)(4).

The issue in this case is whether the beneficiary's three-year master's degree from India, which follows a three-year bachelor's degree from India, is individually the foreign equivalent of a U.S. master's degree.

The evidence in the record of proceeding includes the diploma and transcript for the beneficiary's three-year master of computer applications degree from Bharathidasan University, India, and his three-year bachelor of science degree from Nagarjuna University, India. The transcripts indicate that the beneficiary's master's degree was based on full-time course of study, i.e., this was not a two-year master's degree obtained over the course of three years. The record also includes an academic equivalency evaluation from [REDACTED] of The Trustforte Corporation. The evaluation states that the beneficiary's master of computer applications degree is equivalent to a master of computer science from an accredited U.S. college or university.

USCIS uses an evaluation of a person's foreign educational credentials 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). However, where the evaluator's opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). In the instant case, there is no reason to question the validity of the submitted evaluation.⁴

In determining whether the beneficiary's master's degree is individually a foreign equivalent degree, the AAO has also consulted the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). EDGE provides another source to consider in the evaluation of foreign credential equivalencies. AACRAO, according to its website at www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent

⁴The record also contains an academic credentials evaluation by [REDACTED] of Morningside Evaluations and Consulting. The evaluation states that the beneficiary's master's degree is the equivalent of a master's degree in computer science from an accredited institution of higher education in the United States. This evaluation is rejected as incompetent evidence. [REDACTED] does not have the authority to grant academic credit. In December 2001, USCIS received correspondence from [REDACTED] Assistant Vice President and Special Counsel to the President, Queens College. [REDACTED] letter stated that [REDACTED] did not have the authority to grant college-level credit for foreign university studies. Where an evaluation is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817.

approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE at <http://aacraoedge.aacrao.org/register/index/php>, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

Authors for EDGE are not merely expressing their personal opinions. Rather, authors for EDGE must work with a publication consultant and a Council Liaison, and their opinions are subject to final review and approval by AACRAO's National Council on the Evaluation of Foreign Educational Credentials.⁵

The record contains evidence that the beneficiary obtained a master of computer applications. EDGE provides that a master of computer applications degree from India is "[a]warded upon completion of three years of study beyond the three-year bachelor's degree," and "represents attainment of a level of education comparable to a master's degree in the United States."⁶

Accordingly, based on a review of the beneficiary's credentials, the submitted academic evaluation, and EDGE, it is concluded that the beneficiary's three-year master of computer applications degree from Bharathidasan University is equivalent to a U.S. master's degree.

Whether the Beneficiary Meets the Requirements of the Offered Position

The petitioner must also establish that, as of the priority date, the beneficiary had the qualifications stated on the labor certification. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971).

This determination is the responsibility of USCIS. *See Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F. 2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-13 (D.C. Cir. 1983). The DOL is responsible for determining the availability of suitable U.S. workers for a job and the impact of alien employment upon the domestic labor market. *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983). The DOL's role does not extend to determining if the alien is qualified for the job offered. *Id.*

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term

⁵*See An Author's Guide to Creating AACRAO International Publications*, 5-6 (First ed. 2005), at www.aacrao.org/publications/guide_to_creating_international_publications.pdf.

⁶<http://aacraoedge.aacrao.org/credentialsAdvice.php?countryId=99&credentialID=1680> (accessed July 13, 2009).

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 Madany*, 696 F.2d at 1015.

Part H of the labor certification states the requirements of the job offered, which is set forth below:

- Minimum level of education: master's degree
- Major field of study: computer science
- Alternate fields of study: computer applications or related field
- Training required: no
- Experience in job offered required: no
- Experience in alternate occupation: 12 months as an application developer, junior programmer analyst, programmer analyst, or related occupation
- Alternate combination of education and experience accepted: no
- Foreign educational equivalent acceptable: yes
- Specific skills: demonstrated ability with application development using C#, VB.Net and ASP.Net in .Net 2.0; experience developing stored procedures in a SQL database; creation and maintenance of Insight and PROS application software; and development of reports using SQL Reporting Services.

As discussed *supra*, the beneficiary possesses the foreign equivalent of a U.S. master's degree in computer science. The record also contains letters from the beneficiary's prior employers. These letters establish that it is more likely than not that the beneficiary had at least 12 months experience as an application developer, junior programmer analyst, programmer analyst, or related occupation, and that he possessed the required specific skills listed on the labor certification.

In summary, the beneficiary's three-year master's degree from India is individually the foreign equivalent of a United States master's degree. Therefore, the beneficiary qualifies for preference visa classification under section 203(b)(2) of the Act. In addition, the beneficiary meets the job requirements on the labor certification.

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 director's decision in the notice of certification is affirmed. The petition is approved.