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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Office of Administrative Appeals MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: **MAR 25 2010**

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IN RE:

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:

SELF REPRESENTED

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).

Perry Rhew
Chief, Administrative Appeals Office

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

The petitioner claims to be a financial services business. It seeks to permanently employ the beneficiary as a "software engineer, applications." On the petition, the petitioner requested classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).¹ The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

As is set forth in the director's October 29, 2008 decision, at issue in this case is whether the job offer portion of the labor certification requires a member of the professions holding an advanced degree. The AAO will also consider whether the petitioner has established that the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification.²

The record shows that the appeal is properly filed, timely, and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The AAO maintains plenary power to review each appeal on a *de novo* basis. 5 U.S.C. § 557(b); *see also Janka v. U.S. Dept. of Transp.*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.³

In order to classify the beneficiary in the requested employment-based preference category, the job offer portion of the labor certification "must demonstrate that the job requires a professional holding an

¹Section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or aliens of exceptional ability, whose services are sought by an employer in the United States. There is no evidence in the record of proceeding that the beneficiary possesses exceptional ability in the sciences, arts or business. Accordingly, consideration of the petition will be limited to whether the beneficiary is eligible for classification as a member of the professions holding an advanced degree.

²An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the director does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

³The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

advanced degree or the equivalent." 8 C.F.R. § 204.5(k)(4). If the offered position does not require an advanced degree, the petition must be denied.

The regulation at 8 C.F.R. § 204.5(k)(2), defines "advanced degree" as follows:

[A]ny United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. 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.

The key to determining whether the offered position requires an advanced degree is found on the labor certification. See 8 C.F.R. § 204.5(k)(4). The minimum education, training, experience and skills required to perform the offered position are set forth at Part H of ETA Form 9089. In the instant case, the labor certification states that the offered position has the following requirements:

- H.4. Education: Master's degree in computer science.
- H.5. Training: None required.
- H.6. Experience in job offered: None required.
- H.7. Acceptable alternate field of study: Computer information systems or related.
- H.8. Acceptable alternate combination of education and experience: Will accept a three- or four-year bachelor's degree plus five years of experience.
- H.9. Foreign educational equivalent acceptable: Yes.
- H.10. Acceptable experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: None.

For the acceptable alternate combination of education and experience at H.8., it is noted that the petitioner did not select "Bachelor's." Instead, it selected "Other" and stated that the educational requirements of the offered position could be met with a three- or four-year bachelor's degree. A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Although the petitioner correctly points out that there exist *accelerated* three-year bachelor's degree programs in the U.S. that are considered equivalent to a four-year degree, the fact remains that three-year bachelor's degrees are generally not equivalent to a four-year bachelor's degree granted by an accredited U.S. college or university. Since the labor certification permits individuals to qualify for the offered position with less than a U.S. bachelor's degree, the job offer portion of the labor certification does not require an individual with an advanced degree as defined by 8 C.F.R. § 204.5(k)(2). The petition cannot be approved for this reason.

Beyond the decision of the director, the petitioner has also not established that the beneficiary is qualified for the offered position. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Wing's Tea House*, 16 I. & N. Dec. 158, 159 (Act. Reg. Comm. 1977); see also *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. Comm. 1971). 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. U.S. Citizenship and Immigration Services (USCIS) 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. Coorney*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, the job offer portion of the labor certification requires an individual with a master's degree (or a three- or four-year bachelor's degree) in computer science, computer information systems or related field of study.

The record of proceeding contains a copy of the diploma and transcripts for the beneficiary's three-year bachelor of science degree in "maths, statistics & economics" from Ruhailkhand University, India. The record also contains a copy of the beneficiary's advanced diploma in software applications from [REDACTED] and a post graduate diploma in computers an information management from Upton Academy of Computer Learning, India. Submitted with the beneficiary's credentials is an evaluation of [REDACTED], dated July 5, 2006. [REDACTED] evaluation states that the beneficiary's bachelor's degree is equivalent to a U.S. bachelor's degree, and that the combination of the bachelor's degree and two diplomas is equivalent to a U.S. master's degree. However, the evaluation does not specify a field of study. Therefore, the petitioner has not established that the beneficiary possesses a master's degree or three- or four-year bachelor's degree in one of the required fields of study required by the labor certification. It has also not been established that "maths, statistics and economics" is a related degree to computer information systems or computer science.

Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

The labor certification does not require a member of the professions holding an advanced degree. The record also does not establish that the beneficiary meets the minimum requirements of the offered position as set forth in the labor certification. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternative basis for denial.

When the AAO denies a petition on multiple alternative grounds, a plaintiff can succeed on a challenge only if it is shown that the AAO abused its discretion with respect to all of the AAO's enumerated grounds. *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d at 1043.

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.