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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
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**U.S. Citizenship
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B5



DATE: OFFICE: NEBRASKA SERVICE CENTER

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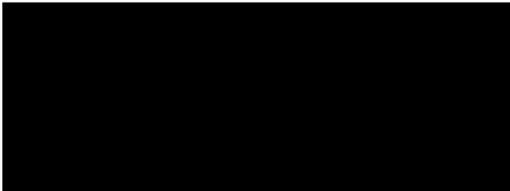
JAN 20 2012

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:



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 employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petition is now on appeal before the Chief, Administrative Appeals Office (AAO). The Director's decision will be withdrawn and the petition remanded for a new decision.

The petitioner – [REDACTED] – is a consulting, technology services, and outsourcing company. It claims to be the successor-in-interest to [REDACTED], the software development and consulting company that filed the petition and received the Director's decision. Like [REDACTED] seeks to permanently employ the beneficiary in the United States as Associate Manager – Recruiting, and to classify her 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). As required by statute, an ETA Form 9089, Application for Permanent Employment Certification, approved by the Department of Labor (DOL), accompanied the petition.

The Director denied the petition on the ground that the labor certification (ETA Form 9089) does not support the classification of the job opportunity as a professional position requiring a baccalaureate or advanced degree in a specific field of study.

On appeal, the petitioner pointed out that the Director misidentified the proffered position in his decision as a Senior Software Engineer, rather than Associate Manager – Recruiting. The petitioner asserted that the DOL, in certifying the ETA Form 9089, determined that the educational requirements specified in the labor certification were proper, and that the Director erred in not accepting the DOL's determination.

Section 203(b)(2) of the Act provides for 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. *See* 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 regulation at 8 C.F.R. § 204.5(k)(4) also provides, in pertinent part, as follows:

- (i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor The job offer portion of the individual labor certification . . . must demonstrate that the job requires a professional holding an advanced degree or the equivalent

The job requirements are specified by the petitioner in Part H of the ETA Form 9089. This section of the labor certification application – 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.

The job title of the proffered position is identified in Part H, Box 3, as Associate Manager – Recruiting. In Boxes 4, 4-B, and 6 the minimum education and experience requirements are

specified as a master's degree in any discipline plus 12 months (one year) in the job offered. Alternatively, the petitioner specified in Boxes 8, 8-A, and 8-C that a bachelor's degree and five years of experience would be acceptable. In Box 9 the petitioner stated that a foreign educational equivalent is also acceptable.

The documentation of record shows that the beneficiary earned the following academic credentials in India: (1) an All India Secondary School Certificate from the Government Model High School Sector 16 in Chandigarh in 1981, (2) a Bachelor of Arts degree in Psychology from Panjab University in 1985, (3) a Master of Arts degree in Psychology from Panjab University (following a two-year course of study) in 1987, (4) a Post-Graduate Diploma in Industrial Relations & Personnel Management from the Rajendra Prasad Institute of Communication & Management in Bombay (following a program of unspecified duration and an examination) in 1994, and (5) a Bachelor of Laws degree from Panjab University in 1990.

The record also includes evidence of the beneficiary's work experience prior to April 2006 (when her employment with the original petitioner commenced) in the form of letters from previous employers. One letter, from the president of [REDACTED] dated April 1, 2006, stated that the beneficiary was employed as "Associate Manager – Recruiting" from October 2004 to March 2006. A letter from the president of Resources and Services Unlimited, Inc. in New York City, dated August 31, 2004, stated that the beneficiary was employed as "Director of Recruitment" but did not indicate how long she had held the job. A letter from [REDACTED] dated 3.7.2001, stated that the beneficiary had worked for the company since May 1993 and currently served as "Senior Manager" with oversight of "Legal/Administration work."

In his decision the Director focused on the educational requirements of the proffered position and stated as follows:

For an occupation to be considered within the professions, it is not enough that an employer desires to employ a person with a degree; it must be demonstrated that a specific degree or relevant range of degrees is required for entry into the position. In this case the occupation, as listed on the individual labor certification, requires no such specialized degree.

After reviewing old decisions of the legacy Immigration and Naturalization Service (INS) consistent with the foregoing assessment – in particular, *Matter of Shin*, 11 I&N Dec. 686 (Dist. Dir. 1966) and *Matter of Palanky*, 12 I&N Dec. 66 (Regl. Commr. 1966) – the Director determined that:

. . . the job offer portion of the individual labor certification does not demonstrate that the occupation requires a professional, since it does not require the beneficiary to have obtained at least a baccalaureate degree in a field of study that allows entry into the listed occupation.

At issue in this appeal, therefore, is whether a labor certification requiring an academic degree must also specify a major field of study in order for the job in the visa petition to qualify as a *bona fide* professional position.

Section 101(a)(32) of the Act defines “profession” as follows:

The term “profession” shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.

“Profession” is further defined in the regulation at 8 C.F.R. § 204.5(k)(2), as follows:

Profession means 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.

The Director recited these definitions in his decision, but relied on the aforementioned INS decisions in *Matter of Shin* and *Matter of Palanky* in ruling against the petitioner. Both of these decisions predate the regulation at 8 C.F.R. § 204.5(k)(2). Therefore, the AAO must defer to the definition in that regulation, which states only that a profession is an occupation that requires at least a baccalaureate degree for entry into the occupation. The regulation does not state that the degree must be in a field specifically related to the occupation.

In Part F of the ETA Form 9089 the DOL assigned the Standard Occupational Classification (SOC) code of 13-1071.00 and the occupation title “Employment, Recruitment, and Placement” to the proffered position of Associate Manager – Recruiting. The DOL’s occupational codes are assigned based on normalized occupational standards. The occupational classification of the offered position is determined by the DOL (or applicable State Workforce Agency) during the labor certification process, and the applicable occupational classification code is noted on the labor certification form. O*NET is the current occupational classification system used by the DOL. Located online at <http://online.onetcenter.org>, O*NET is described as “the nation's primary source of occupational information, providing comprehensive information on key attributes and characteristics of workers and occupations.” O*NET incorporates the SOC system, which is designed to cover all occupations in the United States.¹

O*NET classifies the proffered position (SOC code of 13-1071.00) under the occupation of Human Resources Specialists. The O*NET online database states that this occupation falls within Job Zone Four. The DOL assigns a standard vocational preparation (SVP) of 7 to 8 for Job Zone Four occupations. Most of the occupations in Job Zone Four require a four-year bachelor's degree, but some do not. See <http://www.onetonline.org/link/summary/13-1071.00> (accessed January 5, 2012). Additionally, the DOL states the following concerning the training and overall experience required for these occupations:

A considerable amount of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and

¹See <http://www.bls.gov/soc/socguide.htm>. Prior to O*NET, the DOL used a different occupational classification system – the Dictionary of Occupational Titles (DOT). The O*NET website contains a crosswalk that translates DOT codes into SOC codes. See <http://online.onetcenter.org/crosswalk/DOT>.

work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

Thus, O*NET confirms that most jobs in the occupation at issue in this petition require a bachelor's degree, but it does not indicate that the degree must be in any particular field or fields. This assessment is in line with the petitioner's specification in the ETA Form 9089, certified by the DOL, that the proffered position in this case requires either a master's degree in "any discipline" (and one year of experience in the job offered) or a bachelor's degree in any discipline (and five years of experience in the job offered).

Based on the foregoing analysis, the AAO determines that the specific job certified by the DOL is a professional position. Accordingly, the Director's decision of June 18, 2007, denying the petition, will be withdrawn.

However, the petition cannot be approved by the AAO based on the present record. Therefore, it will be remanded to the Director for the consideration of issues not previously addressed, and the issuance of a new decision.

On August 1, 2011, the AAO issued a Notice of Derogatory Information (NDI) advising the original petitioner that evidence had come to light casting doubt on whether the petitioner was actually conducting business at the address in New Jersey identified as its business premises, and whether the beneficiary would actually be employed at that location. If this evidence is correct, the labor certification by the DOL would be subject to invalidation by USCIS. The petitioner was advised that it could submit evidence to rebut the derogatory information conveyed in the NDI. The petitioner was also advised that additional documentation was needed to establish its ability to pay the proffered wage to the beneficiary, as well as the proffered wages to all other beneficiaries of pending immigrant visa petitions (Form I-140) and nonimmigrant visa petitions (Form I-129), since the priority date of the instant petition (June 12, 2006).

A response to the NDI was received on August 30, 2011, from a new attorney representing a company claiming to be the successor-in-interest to the original petitioner. The response was accompanied by some documentation addressing the issues raised in the NDI, as well as some documentation relating to the purchase of [REDACTED] in 2010. A new issue presented by the response is whether the current petitioner has established that it is the legal successor-in-interest to the original petitioner.

In addition, while the AAO has determined that the Associate Manager – Recruiting is properly classified as a professional position, it must be determined whether the beneficiary qualifies for the job under the terms of the labor certification. As previously discussed, the education and experience requirements are either (1) a master's degree (or foreign educational equivalent) and one year of experience in the "job offered" or (2) a bachelor's degree (or foreign educational equivalent) and five years of experience. The current record does not establish that the beneficiary has at least five years of experience, as required by the terms of the ETA Form 9089 if the beneficiary's qualifying education is a bachelor's degree.

As always in visa petition proceedings, the burden of proof rests entirely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The Director's decision of June 18, 2007 is withdrawn. The petition is remanded to the Director for consideration of the issues discussed above and the issuance of a new decision.