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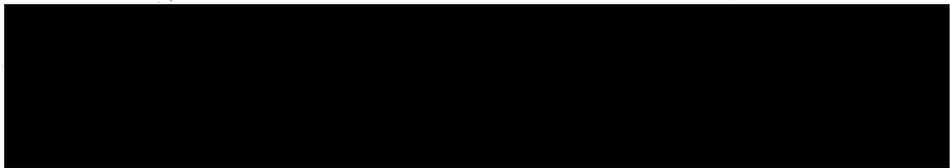
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U.S. Citizenship  
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **APR 13 2005**  
WAC-02-288-51318

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

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, Director  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, California Service Center<sup>1</sup>, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an information technology consulting firm. It seeks to employ the beneficiary permanently in the United States as a management analyst. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that the beneficiary was qualified for the proffered position and denied the petition accordingly.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii), also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. In response to a request for evidence from the director, the petitioner indicated that it is seeking classification under the skilled worker category.

The issue to be discussed in this case is whether or not the petitioner established the beneficiary's qualifications for the proffered position<sup>2</sup>. To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date, which is August 20, 2001. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS 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. Coomey*, 661 F.2d 1 (1st Cir. 1981).

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<sup>1</sup> Although the petitioner lists its address in Pennsylvania, which would typically give the Vermont Service Center jurisdiction over this matter, the duties of the proffered position will be performed in Phoenix, Arizona, which gives the California Service Center jurisdiction.

<sup>2</sup> The petitioner has established that the beneficiary meets the educational requirement of the proffered position. The beneficiary has a Bachelor's degree in Computer Information Systems from Arizona State University, which meets the educational requirement as set forth on the ETA 750A. Thus, this decision will only address the issue of the experience requirement of the proffered position as set forth on the ETA 750A and not the educational requirement.

In the instant case, the Application for Alien Employment Certification, Form ETA-750A, items 14 and 15, set forth the minimum education, training, and experience that an applicant must have for the position of travel agent. In the instant case, item 14 describes the requirements of the proffered position as follows:

- |                         |                                                                |
|-------------------------|----------------------------------------------------------------|
| 14. Education           |                                                                |
| Grade School            | 8                                                              |
| High School             | 4                                                              |
| College                 | 4                                                              |
| College Degree Required | Bachelor's Degree                                              |
| Major Field of Study    | Business Administration, Computer Information Systems or equiv |

The applicant must also have one year of experience in the job offered in order to perform the job duties listed in Item 13, which states the following:

Assist in design requirements for employee incentive compensation and sales force management programs. Gather, analyze and organize information developed by systems analysts to assist clients develop solutions and improve employee sales force Information Technology management systems. Under direct supervision, utilize advanced business analysis training and experience to identify required data input and output. Work with computer systems analysts, providing business and management analysis for creating categories for all queries with Visual Basic, Fox Pro and Oracle Systems. Analyze the completed system for user's point of view and prepare system documentation and reports to clients for use by management to increase sales force efficiency.

Item 15 indicates that there are no special requirements.

The beneficiary set forth his credential on Form ETA-750B and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On Part 15, eliciting information of the beneficiary's work experience, he listed the following:

- a. The petitioner, Management Analyst (entry), Phoenix, AZ, from July 2000 to present. The job duties reflect the job duties of the proffered position;
- b. Arizona State University, Computer Generalist, Tempe, AZ, from May 1998 to May 2000. The beneficiary indicated that he performed the following duties: "Assisted users with trouble shooting Microsoft Office products such as Windows 95/98 and Outlook 98. Maintained service requests and student affairs inventory databases on a day-to-day basis. Documented service request database and student affairs inventory database. Used Novell NetWare 5.0 Network Administration to support 800 users, create new accounts, trouble shoot login problems, resolve user disk space issues and compile a list of problems using network printers. Responsible for setting up new workstations on network and maintaining support help desk hotline."
- c. Alcatel Pakistan Limited, Finance Trainee, Islamabad, Pakistan, from August 1996 to December 1996. The beneficiary indicated that he performed the following duties: "Assisted treasury in finance department.

Maintained and updated accounting database on network. Reconciled bank statements for all bank accounts. Prepared receipt and payment vouchers for all monetary transactions conducted through correspondence [sic]. Prepared daily fund position statements to compile daily postings.”

Other than a resume outlining the beneficiary’s employment experience, with the initial petition, the petitioner submitted no evidence of the beneficiary’s qualifying employment experience for the proffered position.

Because the evidence was insufficient, the director requested additional evidence concerning the evidence of the beneficiary’s qualifications on March 4, 2003. Pursuant to the requirements set forth at 8 C.F.R. § 204.5(1)(3), the director requested a letter from the beneficiary’s prior employers with details conforming to the regulatory requirements. The director also requested pay stubs, W-2 forms, or other corroborating evidence of the beneficiary’s employment with employers in the United States or abroad.

In response to the director’s request for evidence, the petitioner submitted a letter, dated October 11, 2002, from Alcatel Pakistan Limited (Alcatel), signed by its Chief Financial Officer, stating that the beneficiary was employed at their organization as a Finance Trainee from August 1996 to December 1996, and performed the following duties: “Assisted treasury functions in finance department. Helped in maintenance and updating accounting database by making specified entries in there. Assisted in preparation of bank reconciliation statements. Prepared accounting vouchers for related monetary transactions. Aided in preparation of daily fund position statements.” The petitioner also submitted additional letters from Alcatel from 1996 indicating that the beneficiary’s internship was extended from November 1996 to April 30, 1997<sup>3</sup>, as well as a letter from [REDACTED] also in 1996, offering the beneficiary the initial internship from August 1996 to October 1996.

The petitioner also submitted a letter from Arizona State University (ASU), dated May 9, 2003, and signed by [REDACTED] the director of the university’s Student Affairs Computing Services department, who states that the beneficiary was employed for 20 hours per week from May 1998 to May 2000 and 40 hours per week during breaks. [REDACTED] stated that the beneficiary performed the following duties:

Assisted with trouble shooting Microsoft Office products such as Windows 95/98 and Outlook 98. Maintained the service request database and Student Affairs Computer Services inventory database. Made use of Novell 5.0 Network Administration to support 800 users, including the creation of new accounts, trouble shooting log in errors, resolving user space issues and compiling a list of the problems occurring with the network printers. Responsibilities included setting up new workstations on network and maintaining support for the help desk hotline.

Copies of paystubs issued to the beneficiary from ASU were also submitted. Counsel’s accompanying letter stated that the employment experience letters prove that the beneficiary had four months of qualifying experience from his finance trainee internship with Alcatel and one year and 1.5 weeks of qualifying experience as a computer generalist at ASU<sup>4</sup>.

<sup>3</sup> Counsel’s accompanying letter indicates that the beneficiary left the internship in December 1996 to attend a master’s program at the International Islamic University in Islamabad, Pakistan.

<sup>4</sup> Counsel determined that the total claimed work experience was one year and 1.5 weeks based upon the hours

The director denied the petition on June 23, 2003 stating that the description of duties of the beneficiary's prior work experience failed to prove that the beneficiary had one year of employment experience as a management analyst or performing similar duties to the proffered position.

On appeal, counsel asserts that the petitioner's experience requirement for the proffered position was an equivalency requirement. Counsel recites the advertisement for the proffered position as follows:

Management Analyst (Entry): Asst in dsgn of empl incentive compn & sales force mng prgms. Gather, analyze & org info dev by syst analysts to asst clients dev solutions & improvempl sales force IT mang syst. Under dir supv util adv bus anal training & experience to id req data input & output. Work w/cs analysts, providing bus & mang anal for creating categories for al queries w/VB, FoxPro & Oracle Syst. Prep syst doc & repts to clients for use by mng. Req: BS or equiv. In Bus Admin or CS, 1 yr exp. M/F 9-5. Reply to Ms. Stewart, HR . . .

Counsel states that the petitioner advertised and recruited to hire a management analyst in good faith, disqualifying ten other applicants because they did not have the mixture of business and technical skills required by the proffered position. The petitioner also submitted a letter. The petitioner's letter stated that the beneficiary's past employment experience involved experience equivalent to the proffered position and was the reason he was hired. The petitioner also submitted the beneficiary's performance evaluations for work performed for the petitioner.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), guiding evidentiary requirements for "skilled workers," states the following:

If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory provision<sup>5</sup>.

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reported on the paystubs issued from ASU to the beneficiary. Counsel stated that the paystubs demonstrate that the beneficiary worked a total of 2,140.80 hours for ASU over two years, which based on a work year of 2080 hours, equates to one year and 1.5 weeks.

<sup>5</sup> For petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification" as clearly directed by the plain meaning of the regulatory provision. And for the "professional category," the beneficiary must also show evidence of a "United States baccalaureate degree or a foreign equivalent degree." Thus, regardless of category sought, the petitioner must

Additionally, the regulation at 8 C.F.R. § 204.5(1)(3) provides:

(ii) *Other documentation*—

(A) *General.* Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

The AAO concurs with the director's decision. Although counsel and the petitioner provide an evaluation of the experience requirements of the proffered position on appeal, the ETA 750A, Part 14 is clear. The petitioner set forth 1 year of experience as a management analyst, for experience in the job offered. No clarification or elaboration of that requirement was appended to that 1 year requirement. In a separate box eliciting alternative experience requirements, such as experience in a "Related Occupation," the petitioner left it blank. Even the advertisement that counsel quoted in his appellate brief clearly states "1 yr. exp." without any additional verbiage. It did not state "1 yr. exp. in any computer field as long as it has business and technical aspects," or "1 yr. exp. or equiv." Or "1 yr. exp. in a computer related field." Counsel did not provide the posting notice. Regardless, all documents setting forth the requirements of the proffered position in this matter, the ETA 750A requirements, the advertisement, and the posting notice, needed to match to comply with the requirements of a good faith recruitment phase guided by the Department of Labor (DOL). The AAO was not privy to the petitioner's recruitment and disqualification phase, which is irrelevant to the issue in these proceedings which is whether or not the beneficiary's prior employment experience clearly establishes that he had one year of experience performing the duties of the proffered position.

The letters submitted on the beneficiary's behalf do not indicate that he obtained design or analysis skills prior to commencing employment with the petitioner as an entry-level management analyst<sup>6</sup>. The petitioner stated that the proffered position could be broken into five parts, and stated the following, in pertinent part, from its letter:

First, applicants must assist in designing the requirements for employee incentive compensation and sales force management programs. This requires experience and/or knowledge in information technology and business management. Second, applicants must gather, analyze, and

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show that the beneficiary meets the requirements of the Form ETA 750A, which includes both a degree and experience requirements.

<sup>6</sup> The beneficiary's excellent performance evaluations, while commendable, are also irrelevant to these proceedings.

organize the information developed by systems analysts to develop solutions and improve sales force IT systems. This requires the applicant to have excellent communication skills and highly technical knowledge – applicants must possess the ability to speak in highly technical terms with systems analysts. Third, the applicants require business and management education and background to identify the date required for input and the date required for efficient output. Fourth, the applicant must create categories for all queries using the programming languages of Visual Basic and Fox Pro as well as utilizing database management systems. Again, this requires highly technical knowledge as well as a business background for determining what queries can be expected and would be useful . . . Fifth, the applicant must analyze the completed system solution from the user's point of view and ensure that the system is able to prepare the documentation necessary for use by management. Clearly, this requirement also places a premium on candidates with a combination of business and IT experience and acumen.

The petitioner provides an assessment of the experience required to perform the duties of the proffered position. The AAO agrees with the petitioner's assessment of the requirement that applicants must assist in designing the requirements for employee incentive compensation and sales force management programs requires experience and/or knowledge in information technology and business management. However, following assessments are without merit as the petitioner makes overly broad generalities about equivalent experience. For example, the position's requirement about being able to gather, analyze, and organize information developed by systems analysts to develop solutions and improve sales force IT systems does not merely require applicants to have excellent communication skills and highly technical knowledge, it also requires analytical skills. Similarly, analyzing a completed system solution from the user's point of view and ensure that the system is able to prepare the documentation necessary for use by management does not only seek a combination of business and IT experience and acumen, but analytical skills as well. In short, an analyst must have analytical skills. Nowhere in descriptions of the beneficiary's prior employment experience does it reflect that he obtained analytical skills, or design skills for that matter. Similarly, there is no evidence that the beneficiary acquired skills using the programming languages of Visual Basic and Fox Pro prior to his current employment. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. See *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

The AAO also notes that there is an inconsistency contained in documents submitted into the record of proceeding. A Form G-325, Biographic Information sheet, filed by the beneficiary to adjust status to lawful permanent resident, indicates that he was not employed prior to his current employment with the petitioner<sup>7</sup>. This is inconsistent with the prior employment experience he claimed on the ETA 750B and in connection with these proceedings at Alcatel and ASU. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988) states: "Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition." *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988) also states: "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to

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<sup>7</sup> The beneficiary signed this form in 2002 above a warning about penalties for knowingly and willfully falsifying or concealing a material fact. The form elicited information about the beneficiary's prior employment for the past five years, but the beneficiary only listed the petitioner from July 2000, writing "None (Student)" below that entry.

explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice.” It is unclear why the beneficiary would fail to represent his prior employment experience as he had done so on the ETA 750B.

The petitioner has failed to provide sufficient evidence that the beneficiary is qualified for the proffered position with one year of experience as delineated as a requirement on the ETA 750A.

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.