

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY

U.S. Department of Homeland Security  
20 Mass. Ave., N.W., Rm. A3042  
Washington, DC 20529



U.S. Citizenship  
and Immigration  
Services

B6



FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: APR 14 2005  
LIN-03-131-50457

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

PETITION: 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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is an individual and business accounting and tax firm. It seeks to employ the beneficiary permanently in the United States as an accountant. 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 had a bachelor's degree or the equivalent as required on the Form ETA 750, and denied the petition accordingly.

On appeal, counsel states that the evidence establishes that the beneficiary's education is equivalent to a bachelor's degree.

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 or seasonal nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who, at the time of petitioning for classification under this paragraph, are professionals.

A labor certification is an integral part of this petition, but the issuance of a Form ETA 750 does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. 8 C.F.R. § 103.2(b)(1), (12). See *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). The priority date is the date the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. See 8 C.F.R. § 204.5(d). The priority date in the instant petition is April 27, 2001.

The Form ETA 750 states in block 14 that the position of accountant requires a bachelor's degree in accounting or the equivalent, and two years of experience in the offered position or in the related occupation of accountant. Other special requirements stated in block 15 are that the beneficiary must be bilingual in Arabic and English, for reading, writing and speaking, and that the required two years of experience must include the preparation of financial reports. The Form ETA 750 contains no criteria against which to measure whether a beneficiary's education is equivalent to a bachelor's degree in accounting, which is the alternative educational requirement stated in block 14.

On the Form ETA 750B, signed by the beneficiary on April 24, 2002, the beneficiary did not claim to have worked for the petitioner.

The I-140 petition was submitted on March 12, 2003. On the petition, the petitioner claimed to have been established in 1987, to have a gross annual income of \$1,300,000.00, and to currently have 15 employees. The item for net annual income was left blank on the petition.

In support of the petition, the petitioner submitted a copy of an evaluation report dated April 17, 2001 by the Foundation for International Services; three copies of the beneficiary's passing certificate issued by Marathwada University for the Bachelor of Commerce examination held in "March/April" 1987; copies of the beneficiary's transcripts for studies at Marathwada University in 1984, 1985, and 1987; a copy of the beneficiary's certificate of membership in the Council of Petroleum Accountants Societies dated August 22, 1994; a copy of a letter dated April 14, 2001 from [REDACTED] Certified Accountants, Qalqelia, Palestine, stating the beneficiary's employment as an accountant with that firm from September 1, 1987 to

November 1, 1989; a copy of a letter dated April 24, 2001 from ██████████ Williams & Co., Wauseon, Ohio, stating the beneficiary's employment as an accountant with that firm from August 1997 to August 2000; a copy of an unaudited financial statement of the petitioner for the twelve-month period ending December 31, 2002; a copy of the petitioner's Form 1120S U.S Income Tax Return for an S Corporation for 2001; and a letter dated March 10, 2003 from the petitioner's president describing the petitioner's business and its financial resources.

In a request for evidence (RFE) dated July 16, 2003 the director requested additional evidence pertaining to the petitioner's ability to pay the proffered wage and additional evidence pertaining to the beneficiary's qualifications.

In response to the RFE, counsel submitted a letter dated September 23, 2003 and the following evidence: a copy of the beneficiary's Statement of Marks issued by the University of Poona for the "M. Com." examination of April 1992; a letter dated April 15, 2001 from ██████████ Certified Accountants, Qalqelia, Palestine stating the beneficiary's employment as an accountant with that firm from September 1, 1987 to November 1, 1989; a copy of the petitioner's Form 1120S U.S Income Tax Return for an S Corporation for 2002; a copy of a Foreign Credentials Evaluation Report for the beneficiary dated September 22, 2003, issued by International Educational Consulting; and additional copies of other documents which had been submitted previously for the record.

In a decision dated October 17, 2003, the director determined that the evidence failed to establish that the beneficiary had a bachelor's degree or a foreign equivalent degree. The director therefore denied the petition.

On appeal, counsel submits a brief and the following additional evidence: a letter dated November 6, 2003 from the Director of Evaluations, International Education Consulting; copies of letters dated January 7, 2003 and July 23, 2003 from ██████████ Director, Business and Trade Services, [CIS]; a copy of a letter dated December 27, 2002 to ██████████ III from ██████████ The Law Office of Sheela Murthy; a copy of a letter dated June 30, 2003 to ██████████ I from ██████████ Bryan Cave, LLP; copies of decision letters dated October 17, 2003 by the director denying the I-485 applications of the beneficiary, his wife, his son and his daughter and denying the I-765 application of the beneficiary; and additional copies of other documents submitted previously for the record. On appeal counsel also submitted duplicate copies of all of the foregoing documents.

Counsel states on appeal that the evidence establishes that the beneficiary's education is equivalent to a bachelor's degree. Counsel states that the director's decision failed to state the reasoning behind the finding that the beneficiary's education was not equivalent to a bachelor's degree. Counsel states that any ambiguity in the educational evaluation report submitted to the director is clarified by a letter submitted on appeal by an official from the same organization which prepared the report submitted previously.

The AAO will first evaluate the decision of the director based on the evidence submitted prior to the director's decision. The evidence submitted for the first time on appeal will then be considered.

The evidence pertaining to the beneficiary's qualifications shows that the beneficiary holds a three-year bachelor's degree from a university in India and that the beneficiary also has completed one year of studies toward a master's degree at a university in India. The evaluation report for the beneficiary dated April 17, 2001 by the Foundation for International Services relies on a combination of the beneficiary's undergraduate education and his work experience in finding that the beneficiary has the equivalent of a United States bachelor's degree. The evaluation report dated September 22, 2003 by International Educational Consulting relies on a combination

of education at the two universities in finding that the beneficiary has the equivalent of a United States bachelor's degree.

Concerning the preference category, the Form I-140, Part 2, Petition Type, does not distinguish between skilled workers and professionals, for a single check box applies both to skilled workers and to professionals. Nonetheless, even if the instant petition is considered as a petition for a skilled worker, the requirements as stated on the ETA 750 for a bachelor's degree or the equivalent would be unaffected. Moreover, the only regulation specifying the equivalent of a bachelor's degree in the context of immigrant petitions is one which pertains to professionals.

The regulation at 8 C.F.R. § 204.5(l)(2) states in pertinent part

*Professional* means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions.

*Skilled worker* means an alien who is capable, at the time of petitioning for this classification, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States. Relevant post-secondary education may be considered as training for the purposes of this provision.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies for the classification of a professional as follows:

(C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

No provision pertaining to skilled workers specifies the equivalent to a bachelor's degree. Therefore even if it were assumed that the petition is for a skilled worker, the petition would thereby lack any criteria by which to evaluate what is to be considered equivalent to a bachelor's degree. The petitioner was free to specify on the Form ETA 750 the qualifications that it would accept as equivalent to a bachelor's degree, but the petitioner chose not to do so.

Regardless of whether the petition sought classification of the beneficiary as a skilled worker or as a professional, the beneficiary had to meet all of the requirements stated by the petitioner in block 14 of the labor certification as of the day it was filed with the Department of Labor. The Form ETA 750 states in block 14 that the position of accountant requires a bachelor's degree in accounting or the equivalent. The only criteria in the regulations for an equivalent to a United States bachelor's degree are the references in the provisions on professionals to "a foreign

equivalent degree.” See 8 C.F.R. § 204.5(l)(2). The petitioner has not established that the beneficiary had a bachelor’s degree in accounting on April 27, 2001 or a foreign equivalent degree.

In his decision in the instant petition, the director of the Nebraska Service Center correctly summarized the evidence in the record pertaining to the beneficiary’s education and correctly found that the evidence failed to establish that the beneficiary held a United States bachelor’s degree in accounting or a foreign equivalent degree as of the priority date. The director’s decision to deny the petition was therefore correct, based on the record before the director.

On appeal, counsel submits additional evidence. One document submitted on appeal is a letter dated November 6, 2003 from the Director of Evaluations, International Education Consulting. That letter clarifies the language used in the evaluation report dated September 22, 2003 by that organization. The September 22, 2003 report had concluded that the beneficiary’s foreign education was “substantially” equivalent to a United States bachelor’s degree. In the November 6, 2003 letter, the director of that organization states that the use of the word “substantially” was not intended to indicate any ambiguity or to imply that the beneficiary did not possess requisite qualifications for equivalence to a United States bachelor’s degree. Nonetheless, the analysis in the November 6, 2003 letter of the beneficiary’s education is the same as in the September 22, 2003 evaluation report, and also relies on a combination of education from two universities to establish that the beneficiary’s foreign education is equivalent to a United States bachelor’s degree. For this reason, the November 6, 2003 letter fails to establish that the beneficiary had the education required by the ETA 750 as of the April 27, 2001 priority date.

The evidence newly submitted on appeal also includes copies of two letters from attorneys in unrelated cases to the Director, Business and Trade Services, Office of Adjudications, Immigration and Naturalization Service [now CIS] seeking the opinion of that office on methods to establish equivalence to United States advanced degrees, and copies of two letters from the Director, Business and Trade Services sent in reply to those letters of inquiry. In his letters, the Director states concerning 8 C.F.R. § 204.5(k)(2) that it is not the intent of the regulations that a “foreign equivalent degree” be only a single foreign degree and that if a proper credentials evaluations service finds that the foreign degree or degrees are the equivalent of the required US degree, then the equivalence requirement may be met. In his brief in the instant appeal, counsel asserts that similar reasoning should apply to the equivalence requirement for a bachelor’s degree on the Form ETA 750.

Letters and correspondence issued by the Office of Adjudications are not binding on the AAO. Letters written by the Office of Adjudications do not constitute official CIS policy and will not be considered as such in the adjudication of petitions or applications. Although a letter may be useful as an aid in interpreting the law, such letters are not binding on any CIS officer as they merely indicate the writer’s analysis of an issue. See Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, *Significance of Letters Drafted by the Office of Adjudications* (December 7, 2000).

Also submitted on appeal are copies of decision letters dated October 17, 2003 by the director denying the I-485 applications of the beneficiary, his wife, his son and his daughter and denying the I-765 application of the beneficiary. Those decision letters contain no information relevant to the instant appeal.

For the foregoing reasons, the petitioner’s evidence submitted on appeal fails to overcome the decision of the director.

The issue is whether the beneficiary met all of the requirements stated by the petitioner in block 14 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary has a bachelor's degree in accounting on April 27, 2001 or a foreign equivalent 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 not met that burden.

**ORDER:** The appeal is dismissed.