



U.S. Citizenship
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FILE: [REDACTED] Office: [REDACTED]
LIN 03 170 51168

Date: JUL 06 2005

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: 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.


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 on appeal. The appeal will be dismissed.

An attorney provided some of the submissions to CIS in this matter. That attorney, however, did not file a Form G-28, Notice of Entry of Appearance in this matter. The record contains no indication that the petitioner has agreed to be represented by counsel. All representations will be considered, but the decision will be furnished only to the petitioner.

The petitioner is an architectural services company. It seeks to employ the beneficiary permanently in the United States as a food service architect. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the petitioner applied and denied the position accordingly.

On appeal, counsel submits a statement.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for granting preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

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 granting 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.

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.”

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

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 of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study.

If the petition is for a professional pursuant to 8 C.F.R. § 204.5(l), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted for processing on August 7, 2002. The Form ETA 750 states that the proffered position requires a bachelor's degree in architecture and two years of experience in the job offered.

With the petition, counsel submitted copies of transcripts and a diploma in Hebrew. In accordance with 8 C.F.R. § 103.2(b)(3), counsel submitted an English translation of those documents. The translation states that the petitioner's degree is from the State Institute of Technology at the Ben Gurion University in Israel, and is an Associate Degree in Architecture. That translation also includes a translation of the beneficiary's transcript, showing the classes she attended. That translation is accompanied by a certification that the translator is fluent in both Hebrew and English and that the translation is accurate.

Counsel submitted the report, dated April 18, 2002, of a credentials evaluator. That report states that, based on an assessment of the "academic records from Israel in terms of U.S. equivalents and in accordance with Articles 1 and 5 of the 'Convention on the Recognition of Studies, Diplomas and Degrees concerning Higher Education' (Paris, UNESCO, December 21, 1979)" the beneficiary's Israeli degree is the equivalent of an associates degree earned in the United States.¹

In a cover letter, dated February 14, 2003, counsel refers to the diploma, translation, and evaluation as evidence that the beneficiary possesses a bachelor's degree in architecture.

Because the evidence submitted was insufficient to demonstrate that the beneficiary has a bachelor's degree in architecture, the Nebraska Service Center, on August 27, 2003, requested additional evidence pertinent to the beneficiary's education. The Service Center noted that the evidence must demonstrate that the beneficiary's foreign degree is equivalent to a United States bachelor's degree in architecture.

In response, counsel submitted a new translation of the beneficiary's diploma from a different translator. The new translation states that the beneficiary has a "Diploma in Architecture," rather than an "Associate Degree in Architecture," as the first translation stated.

Counsel also submitted a new evaluation of the beneficiary's education from the same evaluation service and the same evaluator who previously stated that the beneficiary's degree is the equivalent of an associate's degree. The new evaluation states that the beneficiary's Israeli degree is equivalent to a United States bachelor's degree in architecture. The evaluator did not mention the previous evaluation and neither reconciled nor even commented upon the disparity between her two evaluations and their mutually contradictory findings.

The director determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree, and, on December 4, 2003, denied the petition.

On appeal, counsel asserts that the second translation of the beneficiary's diploma and transcripts is correct. Counsel asserts that the misunderstanding springs from the mistranslation of a Hebrew word to the English "Associate," when it should have been translated to a work more akin to "engineer." Counsel provided no evidence, other than the new translation, in support of the assertion that the original translation misinterpreted

¹ The evaluation also states that the beneficiary's education and employment experience, taken together, are equivalent to a bachelor's degree in architecture. In instant visa category, however, does not sanction substitution of experience for a requisite degree, and counsel does not appear to rely on any such equivalent.

the word in question. This office notes that counsel's assertion is not evidence. *See INS v. Phinpathya*, 464 U.S. 183, 188-89 n.6 (1984); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503 (BIA 1980).

Counsel further states that she will provide, within a few day, a new evaluation an affidavit from a Hebrew translator explaining the confusion. No further information, argument, or documentation has been received.

The first educational evaluation submitted did not state that its findings were based on the translation of a Hebrew word to the English word "Associate." Instead, that evaluation stated that, based upon its "level and intent" the beneficiary's Israeli degree is the equivalent of an Associates Degree earned in the United States. Counsel's explanation would fully explain the mistranslation of a single word on the beneficiary's diploma, but not explain away, or address at all, the evaluator's initial finding that, based on the records of the classes the beneficiary took and their U.S. equivalents, the beneficiary's degree is the equivalent of a U.S. associates degree. No attempt has been made by counsel, the evaluator, or anyone else to explain how that conclusion, and the contrary conclusion, could have been reached by the same evaluator.

Given that the discrepancy remains unexplained, the petitioner has not satisfactorily demonstrated that the beneficiary has the requisite United States baccalaureate or an equivalent foreign degree. The instant petition, submitted pursuant to 8 C.F.R. §204.5(I), may not be approved.

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.