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U.S. Citizenship
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Services

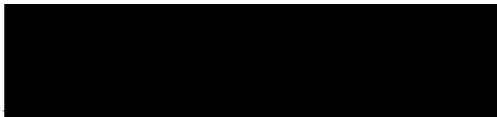
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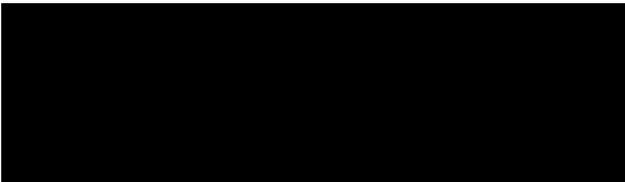
FILE: WAC 03 061 55580 Office: CALIFORNIA SERVICE CENTER Date: JUN 14 2005

IN RE: Petitioner:
Beneficiary:



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:



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, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a real estate company. It seeks to employ the beneficiary permanently in the United States as a property, real estate, and community association manager. 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 beneficiary did not meet the education required by the labor certification.

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

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. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is August 27, 2001.

The approved alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements for applicants. In the instant case, item 14 describes the "college degree required" as a "Bachelor's Degree." The major field of study must be business. Block 14 also describes the "experience required" as three years in the job offered.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submits a copy of the beneficiary's Bachelor's Degree in International Relations, and a copy of a transcript from The National School of Aragon's Professional Studies. An education evaluation was not provided with the initial petition or in response to a request for evidence. The petitioner was put on notice of required evidence and given a reasonable opportunity to provide it for the record before the visa petition was adjudicated. The petitioner failed to submit the requested evidence and now submits it on appeal. However, the AAO will not consider this evidence for any purpose. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988); *Matter of Obaigbena*, 19 I&N Dec. 533 (BIA 1988). The appeal will be adjudicated based on the record of proceeding before the director.

The director denied the petition, concluding that the beneficiary's educational credentials are not an acceptable equivalency for a United States baccalaureate degree in business as required by the labor certification.

On appeal, counsel argues that the beneficiary does possess the equivalent to a U.S. Bachelor's Degree in business. Counsel submits a credentials evaluation from Pace University. The evaluation from Pace University states:

As discussed herein, I find that [REDACTED] attained the equivalent of a Bachelor of Science Degree in Business Management and a Bachelor of Arts Degree in International Relations based on his advanced professional expertise in the field of management, as well as his completion of a bachelor's program in International Relations at the University of Mexico.

* * *

My opinion herein is based on the completion by [REDACTED] of approximately nine years of relevant work experience in management, business administration, as well as his completion of a bachelor's degree in International Relations at the University of Mexico. He has completed approximately nine years of increasingly advanced employment experience and training, concentrated in business management and related disciplines, under the supervision of managers, and together with peers, at a bachelor's level of practical experience.

* * *

As set forth above, [REDACTED] has completed approximately nine years of work experience and training in positions of progressively increasing responsibility and sophistication, characterized by the theoretical and practical application of specialized knowledge under superiors, together with peers, with baccalaureate-level training in business management and related areas. At the equivalency ratio of three years of work experience for one year of college training, promulgated by the United States Citizenship and Immigration Services of the United States Department of Homeland Security ("USCIS"), [REDACTED] completed, in time equivalence, three years of the academic studies required in connection with the attainment of a business management, and related areas. It is my opinion that [REDACTED]' background would be comparable to bachelor's-level educational studies in Business Management.

Based on the reputation of the University of Mexico, the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, as well as approximately nine years of professional training and work experience in business management, and related areas, it is my judgment that [REDACTED] [REDACTED] attained the equivalent of a Bachelor of Arts Degree in International Relations and a Bachelor of Science Degree in Business Management from an accredited college or university in the United States.

The regulations define a third preference category professional as 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.” See 8 C.F.R. § 204.5(l)(2). The regulation at 8 C.F.R. § 204.5(l)(3)(ii) specifies for the classification of a professional that:

(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 Form ETA 750 requires a bachelor degree. A bachelor degree is generally found to require four (4) years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the combination of education and experience, a combination of degrees, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree may not be accepted in lieu of a four-year degree. Furthermore, 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 *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

CIS uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight. *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(C), to qualify as a professional, the petitioner must submit evidence showing 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. In this case, the bachelor's degree must be in business.

The evaluation in the record used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as required by the terms of the labor certification.

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 sustained that burden.

ORDER: The appeal is dismissed.