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**U.S. Citizenship  
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FILE:

[Redacted]  
SRC 04 009 52356

Office: TEXAS SERVICE CENTER

Date:

JUL 28 2006

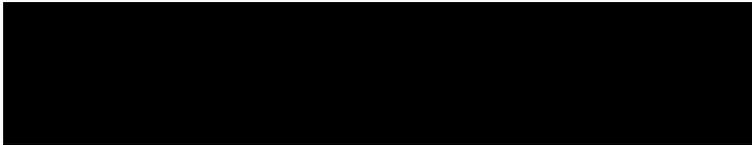
IN RE:

Petitioner:  
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant To § 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, Chief  
Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Texas Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a marble imports and marble setting company. 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 had the education required by the Form ETA 750, a bachelor's degree or its equivalency.

On appeal, counsel states that the director erred in giving undue weight to the petitioner's own credentials evaluation, which counsel asserts initially had incorrectly concluded that the beneficiary had the foreign equivalent of a bachelor's degree in Business Administration, which it unnecessarily based on the beneficiary's work experience as well as his college coursework.

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 who are members of the professions.

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, which in this instance is December 6, 2002. 8 C.F.R. § 204.5(d).

The Form ETA 750 indicated that the position of management analyst requires a four-year bachelor's degree in "Economics/Investments" and two years experience.

In support of the petition, counsel submitted:

- An original certified ETA 750;
- The beneficiary's translated copy of a college diploma in Economics with a specialization in tourism from the University Lucian Blaga of Sibiu, Romania; and,
- The beneficiary's translated course transcript from the University Lucian Blaga, showing five years of college courses in Economics with a specialization in tourism.

On November 8, 2004, the director issued a Request for Evidence (RFE) pertinent to the beneficiary's educational qualifications, among other things.

In response, counsel submitted:

- A credentials evaluation by Morningside Evaluations and Consulting, New York, New York, dated January 30, 2002, concluding that, based upon the beneficiary's work history and his academic coursework, he had the foreign equivalent of a bachelor's of Business Administration degree.

In a decision dated December 1, 2004, the director determined that the evidence did not establish that the petitioner had a bachelor's degree in the major field listed on the ETA 750, which "specifically asks for a four-year Bachelor's degree. It does not allow coursework plus experience as a substitute for education." The director denied the petition, accordingly.

On December 27, 2004, counsel filed a motion asking the director to reopen and reconsider the decision, and submitted a revised credentials evaluation dated December 21, 2004, to replace the "erroneous" January 30, 2002 evaluation. The revised evaluation concluded, based solely upon the beneficiary's college coursework, that the beneficiary had the equivalent of a Bachelor of Arts degree in Economics from an accredited institution of higher education in the United States.

On January 26, 2005, the director decided "the petition will remain denied," rejecting counsel's assertion that the first evaluation was the result of error on the evaluator's part. The director instead noted that the company's two evaluations were contradictory and found that counsel had failed to resolve the inconsistencies in the record through "independent objective evidence."

On appeal, counsel submits:

- A February 23, 2005 credentials evaluation by Mercy College, of Dobbs Ferry, New York;
- A February 21, 2005 credentials evaluation by SpanTran Educational Services, Inc., of Houston, Texas;
- A statement by Morningside Evaluations and Consulting, dated February 23, 2005, explaining the basis for its January 2002 evaluation;<sup>1</sup> and,
- Counsel's brief.

On appeal, counsel states that the beneficiary has valid diploma and transcripts for each of his five years of college study in his native Romania. Noting the evidence submitted on appeal, counsel asserts the director erred by ignoring the beneficiary's diploma and transcripts and "primary evidence" while basing her conclusion upon the evaluation instead of according it the status of an advisory opinion.

The Form ETA 750 states in block 14 that the minimum requirement is a "Bachelor Degree." The ETA 750 further lists the major field of study is "Economics/Investments." Block 15 of the ETA, for Other Special Requirements, states simply "N/A."

The record indicates that the beneficiary holds a bachelor's degree from a Romanian college, granted in June 1996, and has subsequent work experience in Romania.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept that evidence, or may give less weight to it. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The first Morningside educational evaluation in the record does not find that the beneficiary holds a foreign equivalent degree. Rather the evaluation relies on a combination of the beneficiary's education and employment experience in finding that the beneficiary has the equivalent of a bachelor's degree.

Nevertheless, we concur with the assertions made in counsel's December 27, 2004 motions, that the January 30, 2002 evaluation of Morningside contained errors that the company has acknowledged in its February 23, 2005 statement. We further concur that the evidence documenting the beneficiary's college coursework, which counsel

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<sup>1</sup> The statement noted that the initial evaluation was based upon both the experience and academic record of the beneficiary, whereas "he actually has a Bachelor of Arts degree in Economics based on his academic credentials alone."

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had submitted with the petition, was sufficient to establish that the beneficiary met the minimum educational qualifications specified in Parts 14 and 15 of the ETA 750. Counsel has also provided two more credentials evaluations that independently conclude the beneficiary meets the minimum educational requirements in Economics, one of the major fields of study specified in the ETA 750.

The evidence establishes that 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. Therefore, the petitioner has overcome the director's decision that found the evidence did not establish the beneficiary met the minimum educational qualifications for the proffered position.

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 met that burden.

**ORDER:** The appeal is sustained. The petition is approved.