

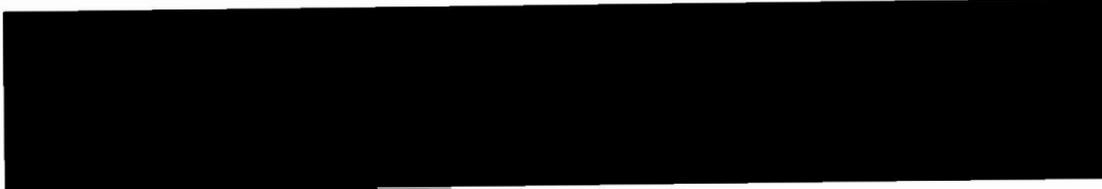
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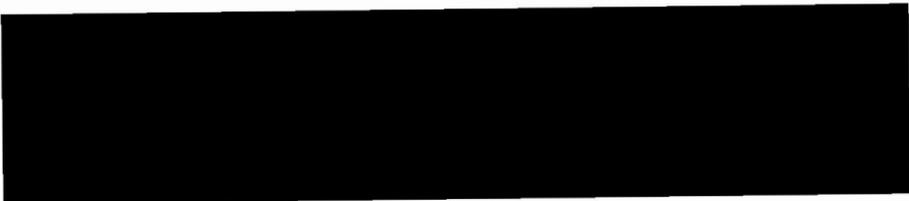


FILE: WAC 03 238 53232 Office: CALIFORNIA SERVICE CENTER Date: JUL 10 2006

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:



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

The petitioner is a computer workstation manufacturer. It seeks to employ the beneficiary permanently in the United States as an information systems manager. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the beneficiary holds the foreign equivalent of a United States baccalaureate degree. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's July 16, 2004 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary holds the foreign equivalent of a United States baccalaureate degree.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted on May 11, 2001.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹ On appeal, counsel submits a brief, a previously submitted educational evaluation report from Educational Evaluation Services, Inc. and a previously submitted educational evaluation report from American Evaluation Institute. Other relevant evidence in the record includes the beneficiary's transcripts, certificates for training courses and the beneficiary's resume.² The record does not contain any other evidence relevant to the beneficiary's education.

On appeal, counsel asserts that the director failed to consider that the beneficiary meets the criteria for classification as a skilled worker. Counsel also asserts that the director erred in his determination that the beneficiary does not hold the equivalent of a United States baccalaureate degree. Counsel states that the beneficiary holds the equivalent of a United States baccalaureate degree based on his education, technical training and certifications.

¹ The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

² The record contains the beneficiary's transcript from Harvard University, evidencing that he earned four credits at Harvard University in the spring of 2003. As the beneficiary must be eligible at the time of filing of the petition on May 11, 2001, the education received by the beneficiary at Harvard University cannot be counted as meeting the requirements of the ETA 750. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

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)(C) states the following:

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 concerning the professional classification 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.

Moreover, if the AAO were to consider the petition under the “skilled worker” classification, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) 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.

The regulations for the skilled worker classification contain a minimum requirement of two years of training or experience. While they do not contain a requirement of a bachelor’s degree, the ETA 750 does contain such a requirement. 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).

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 information systems manager. In the instant case, item 14 describes the requirements of the proffered position as follows:

- | | | |
|-----|-------------------------|-----------------------------|
| 14. | Education | |
| | Grade School | blank |
| | High School | blank |
| | College | 4 |
| | College Degree Required | BS or foreign degree equiv. |
| | Major Field of Study | CS (Computer Science) |

The applicant must also have eight years of experience in the job offered or eight years of experience in engineering/programming. The duties of the job offered are delineated at Item 13 of the Form ETA 750A. Since

this is a public record, the duties will not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The beneficiary set forth his credentials 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 11, eliciting information of the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), he represented that he received a B.S. in computer science from Long Island University in August 1998, that he obtained a certified Solaris systems administrator certificate from Q Vector in October 1998, and that he obtained a diploma in computer networking from the Information Technology Users Council of South Africa in August 1997. He does not provide any additional information concerning his education on that form.

The record indicates that the beneficiary does not hold a United States baccalaureate degree or a foreign equivalent degree. The beneficiary claims that he holds a bachelor's degree in computer science from Long Island University. However, the petitioner failed to provide any evidence of the degree as required by 8 C.F.R. § 204.5(l)(3)(ii)(C). The beneficiary also asserts that he obtained a diploma in computer networking from the Information Technology Users Council of South Africa.³ A certificate from the Information Technology Users Council in the record indicates that the beneficiary has complied with the requirements for the Networking Examination. However, the record does not contain an official college or university record showing the date a baccalaureate degree was awarded and the area of concentration of study as required by 8 C.F.R. § 204.5(l)(3)(ii)(C). Further, the petitioner has provided no evidence that the Information Technology Users Council of South Africa is an educational institution. Instead, the Information Technology Users Council of South Africa appears to be a technology association. The record does not demonstrate that the certificate from the Information Technology Users Council of South Africa is a single academic degree that is a foreign equivalent degree to a United States baccalaureate degree. As stated above, the regulation sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a United States baccalaureate degree. The petitioner has failed to meet this requirement.

The record contains educational evaluation reports from [REDACTED] and American Evaluation Institute. 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 or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). The evaluation from Educational Evaluation Services, Inc. states that as a result of his educational background and formal training, the beneficiary has the equivalent of a United States bachelor's degree in computer science. The evaluation cites the beneficiary's certificate and diploma from the Computer Users Council of South Africa, showing that he completed all of the requirements of a three-year networking program in August 1997. The evaluation also cites a letter from [REDACTED] indicating that the beneficiary passed the Sun Certified System Administrator examination for Solaris 2.6 in 1998 and numerous certificates for computer training courses completed by the beneficiary from 1995 to 2000. However, the evaluation does not conclude that the beneficiary's course of instruction that led to the certificate and diploma from the Computer Users Council of South Africa to be the equivalent of any specific amount of time spent at a United States college or university.

³ The beneficiary states on Form ETA 750B that his course of study at the Information Technology Users Council of South Africa lasted three years, from May 1994 to August 1997. During this time, he also claims on Form ETA 750B to have been working full-time in South Africa.

The educational evaluation report from American Evaluation Institute states that upon evaluation of the beneficiary's combined education, transcripts and certificates, the beneficiary possesses the equivalent of a United States bachelor of science degree in computer science. The evaluation also states that the beneficiary's education, based on certificates and transcripts, is equivalent to 126 United States college credits. However, the evaluation does not detail the specific educational program on which the evaluation is based and the evaluation does not list or contain the certificates and transcripts on which the evaluation is based.

[REDACTED] and American Evaluation Institute are not members of the National Association of Credential Evaluation Services (NACES). The U.S. Department of Education refers individuals seeking verification of the equivalency of their foreign degrees to American degrees through private credential evaluation services to NACES. The objective of NACES is to raise ethical standards in the types of credential evaluations provided by the private sector. In light of the AAO's findings concerning the beneficiary's educational program, the credential evaluations provided by [REDACTED] Inc. and American Evaluation Institute carry little evidentiary weight in these proceedings.

In this case, the labor certification clearly indicates that the equivalent of a United States baccalaureate must be a foreign equivalent degree, not a combination of degrees, training, work experience or certificates which, when taken together, equals the same amount of coursework required for a United States baccalaureate degree. Moreover, the ETA 750 specifically requires four years of college education. The beneficiary has not satisfied these requirements.

The AAO thus affirms the director's decision that the petitioner has not established that the beneficiary possesses the foreign equivalent of a United States baccalaureate degree as required by the terms of the labor certification.⁴

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.

⁴ As noted herein, the result is the same regardless of whether the petition is considered under the skilled worker or professional classifications.