



U.S. Citizenship  
and Immigration  
Services

B6

**Identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

**PUBLIC COPY**



FILE:

WAC-03-181-50906

Office: CALIFORNIA SERVICE CENTER

Date: MAR 07 2006

IN RE:

Petitioner:  
Beneficiary:



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:



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 private academic school. It seeks to employ the beneficiary permanently in the United States as an elementary school teacher. A copy of a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The original of the Form ETA 750 was previously submitted with an earlier I-140 petition on behalf of the same beneficiary, which was later withdrawn by the petitioner. The original ETA 750 is in the beneficiary's A-file, with the record of proceeding of the prior I-140 petition. The record of proceeding of the instant I-140 petition is also contained in the beneficiary's A-file.

In his decision on the instant petition, the director determined that the petitioner had not established that the beneficiary had a bachelor's degree with a major field of study in elementary education, or a foreign equivalent degree, as required on the Form ETA 750, and denied the petition accordingly.

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 Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg. Comm. 1977); *Matter of Katigbak*, 14 I. & N. Dec. 45, 49 (Reg. 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 August 14, 2001.

On the Form ETA 750B, signed by the beneficiary on September 4, 2000, the beneficiary claimed to have worked for the petitioner beginning in September 1999 and continuing through the date of the ETA 750B. The ETA 750 was certified by the Department of Labor on August 14, 2001.

The previous I-140 petition was submitted on March 18, 2002. A request for additional evidence (RFE) was issued by the director on May 22, 2002. In reply to the RFE, counsel submitted a letter withdrawing the I-140 petition, and stating that the petitioner intended to resubmit the I-140 petition concurrently with Form I-485 pursuant to a July 31, 2002 amendment to I-485 regulations. In a notice dated August 29, 2002 the director confirmed receipt of the request for withdrawal and terminated all action by CIS on the petition.

The instant I-140 petition was submitted on May 28, 2003. On the petition, the petitioner claimed to have been established in 1997 and to currently have 40 employees. In the items on the petition for gross annual income and for net annual income the petitioner wrote "Non-Profit." (I-140 petition, Part 5). With the petition, the petitioner submitted supporting evidence.

No request for additional evidence was issued by the director in the proceedings on the instant I-140 petition.

In a decision dated August 23, 2004 the director determined that the evidence failed to establish that the beneficiary had earned a bachelor's degree in elementary education, nor that the beneficiary was certified to teach in elementary education. The director therefore denied the petition.

On appeal, counsel submits a brief and additional evidence.

Counsel states on appeal that the beneficiary obtained a bachelor of nursing at a university in the Philippines and that her studies for that degree included six credits in the field of education. Counsel states that the beneficiary also completed an 18-credit Certificate of Professional Education program at a different university in the Philippines, which then qualified the beneficiary to teach elementary education. Counsel states that an evaluation report on the beneficiary's education finds that the beneficiary's education is equivalent to a United States bachelor's degree with a major in elementary education.

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).

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien's experience or training will be considered.

To determine whether a beneficiary is eligible for an employment-based immigrant visa as set forth above, CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification, form ETA-750A, blocks 14 and 15, sets forth the minimum education, training and experience that an applicant must have for the position of elementary school teacher. In the instant petition, blocks 14 and 15 describe the requirements of the offered position as follows:

- |     |                              |  |
|-----|------------------------------|--|
| 14. | Education (number of years)  |  |
|     | Grade School                 | COMPLETED  |
|     | High School                  | [COMPLETED] (the word "completed" fills the Grade School and the High School blocks) |
|     | College                      | 4  |
|     | College Degree Required      | Bachelor's*  |
|     | Major Field of Study         | Elementary Education   |
|     | Training - yrs               |  |
|     | Experience                   |  |
|     | Job Offered                  | Yrs 2  |
|     | Related Occupation           | Yrs  |
|     | Related Occupation (specify) |  |
| 15. | Other Special Requirements   | *May be foreign equivalent.  |

The beneficiary states her qualifications on Form ETA 750B. In block 11, for information on the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), the beneficiary states the following:

| Schools, Colleges and Universities, etc. | Field of Study        | From    | To      | Degrees or Certificates Received |
|--|-----------------------|---------|---------|----------------------------------|
|  | Primary/ Intermediate | 06/1981 | 03/1986 |                                  |
|  | High School           | 06/1986 | 03/1990 | Diploma                          |
|  | Nursing               | 06/1990 | 03/1994 | Bachelor's                       |
|  | Elementary Education  | 06/1997 | 03/1998 | Bachelor's                       |

The record contains a copy of an evaluation report of the beneficiary's education dated September 26, 2000 by H.R. Analytical Service of Greenfield, Wisconsin. That report finds that the beneficiary holds a bachelor of Science in Nursing (B.S.N.) degree awarded by the University of Iloilo upon completion of a four-year program of study in the College of Nursing, awarded in March 1994. The report states that the beneficiary's B.S.N. degree is the equivalent of a bachelor of science degree in nursing awarded by a regionally-accredited university in the United States.

The evaluation report finds that certifications from the Vice President for Academic Affairs and from the Dean of Central Philippine University, and an Official Transcript of Record issued by Central Philippine University show the beneficiary's completion of a teacher certification program and her qualification to teach.

The report finds that the completion of a post-degree teacher certification program is equivalent to an additional major in elementary education at an accredited university in the United States. The report concludes with the following summary statement: "Upon review of her educational credentials, we find that [the beneficiary] has the equivalent of a Bachelor of Science degree with majors in Nursing and Elementary Education from an accredited university in the United States." (Evaluation report by H.R. Analytical Service, September 26, 2000, at 1).

A copy of the foregoing evaluation report was submitted prior to the director's decision.

The record also contains a copy of a second evaluation report of the beneficiary's education, dated September 24, 2004, by H.R. Analytical Service, which is newly submitted on appeal. The second report gives further details on the beneficiary's course work in the field of education, stating that it included 6 credit hours taken during her studies for her B.S.N. degree, plus 18 credits taken in the professional education program of Central Philippine University. The second report states that admission to that professional education program requires a bachelor's degree in a field other than education. The second report says that the Philippines recognizes two methods to become certified as an elementary school teacher. The first is to obtain a bachelor of elementary education. The

second is to obtain a bachelor's degree in another field and to then complete a certificate for professional education program.

The second evaluation report also states that a certification issued by the president, Central Philippine University, states that the beneficiary has qualified to teach general curriculum subjects at the elementary grade level, as well as Health and Life Science classes at that level.

The second evaluation report finds that the beneficiary's bachelor of science in nursing degree plus her teacher certification are cumulatively equivalent to a bachelor of science degree with majors in nursing and elementary education from an accredited university in the United States.

Copies of each of the documents referred to in the two evaluation reports have been submitted as evidence in support of the instant I-140 petition.

CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, if 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 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.

Concerning the evidence needed to support classification in the above preference categories, the regulation at 8 C.F.R. § 204.5(l)(3)(ii) states in pertinent part:

(A) *General*. Any requirements of training or experience for skilled workers, professionals or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(B) *Skilled workers*. 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.

(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 of 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.

In the definition of “professional,” the regulation at 8 C.F.R. § 204.5(1)(2) uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must have 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.

In the instant case, the only bachelor’s degree held by the beneficiary is her bachelor of science in nursing degree. Although the Form ETA 750B states that the beneficiary also holds a bachelor’s degree in the field of education, that claim is not supported by any documentary evidence in the record. Moreover, on appeal counsel states that the beneficiary was not awarded a bachelor’s degree with a major in the field of education. Counsel states that the ETA 750B made that claim in order to indicate that the credits which the beneficiary earned through the bachelor of elementary education program at Central Philippine University in combination with her bachelor of science degree in nursing were equivalent to a bachelor of science degree with an academic major in elementary education.

The evidence in the record is sufficient to establish that the beneficiary holds a single bachelor’s degree, based on a four-year program of study, and that the beneficiary’s bachelor’s degree is equivalent to a bachelor’s degree granted by a regionally accredited college or university in the United States. The beneficiary’s major field of study for that degree was in nursing. The point at issue is whether the beneficiary’s subsequently-earned credits in the field of education from another university qualify as an additional major field of study in the field of education within the meaning of the ETA 750, Part A.

The beneficiary’s situation is distinct from that of a person who might hold a three-year degree from a foreign college or university, followed by additional training or additional non-degree course work for credit. Such a person’s education would not qualify as single foreign degree which is equivalent to a United States bachelor’s degree.

As noted above, the record contains a certification by the president of Central Philippine University. That certification states in relevant part as follows:

This is to certify that [the beneficiary] has taken education subjects and completed 18 credits from the College of Education, at Central Philippine University, Iloilo City and completed 6 credits while obtaining her Bachelor of Science in Nursing at University of Iloilo, Iloilo City.

This further certifies that the credits she completed at Central Philippine University, in addition to her Nursing degree, [which] she obtained from the University of Iloilo, Iloilo City, qualify her to teach the general curriculum subjects as an Elementary grade level teacher in addition to Health and Life Science Classes at Elementary grade level.

(Certification by the President, Central Philippine University, September 24, 2004, at 1).

The certification by the president, Central Philippine University, is sufficient to establish that the beneficiary's bachelor of science in nursing degree, combined with her subsequent credits in the field of education, qualifies her as an elementary school teacher in the Philippines. However, the ETA 750, Part A, does not list qualification to teach elementary school in one's home country or in any other country as one of the required qualifications for the offered position. Rather, the ETA 750, Part A, requires a bachelor's degree with a major field of study in the field of elementary education.

Block 15 of the ETA 750, Part A, states that the required education may be the "foreign equivalent" to a bachelor's degree with a major field of study in elementary education. (ETA 750, Part A, block 15). But block 15 provides no definition of the term "foreign equivalent." In the absence of any such definition, the ETA 750, Part A, must be considered to require a foreign equivalent degree in the same major field of study as stated in block 14, namely in elementary education. In the instant petition, however, the beneficiary's bachelor's degree is in a different field of study, namely nursing. The fact that the beneficiary took further courses in the field of education after receiving her bachelor of science in nursing degree does not make her degree equivalent to a bachelor's degree in the field of elementary education.

The evidence therefore fails to establish that the beneficiary's education satisfies the requirements of the ETA 750, Part. A.

In his decision, the director stated that no documents in the record indicated that the beneficiary had a bachelor's degree in education from Central Philippine University. That finding is correct, as counsel has conceded on appeal.

The record before the director contained a certification from the Dean, Central Philippine University, listing the beneficiary's coursework in education at that institution. The record also contained a certification from the Vice-President for Academic Affairs, Central Philippine University, which states in pertinent part as follows, "The credits [the beneficiary] earned at Central Philippine University in addition to her nursing degree she obtained from the University of Iloilo, Iloilo City, qualify her to teach courses in Health and Life Sciences as per attached transcript of records." (Certification by Vice President for Academic Affairs, June 8, 1998, at 1). Therefore, the record before the director established that the beneficiary was qualified to teach courses in health and life sciences, but not that she was qualified to teach any other subjects.

The director found that the evidence failed to establish that the beneficiary had a bachelor's degree in elementary education or the foreign equivalent of such a degree, and denied the petition.

The record before the director lacked the copy of the certification by the President, Central Philippine University, which was submitted for the first time on appeal and which states that the beneficiary is qualified in the Philippines as an elementary school teacher in general curriculum subjects. The record also lacked a copy of the second evaluation report, which was likewise submitted for the first time on appeal and which is based in part on the President's certification. The record before the director therefore lacked any evidence that the beneficiary is qualified in the Philippines as an elementary school teacher in general curriculum subjects. Nonetheless, as discussed above, the beneficiary's qualification as an elementary school teacher in the Philippines does not establish that the beneficiary's bachelor of science in nursing degree is equivalent to a United States bachelor's degree with a major field of study in elementary education.

Based on the evidence in the record before the director, the director's decision to deny the petition was correct. Moreover, for the reasons discussed above, the assertions of counsel on appeal and the evidence newly submitted on appeal fail to overcome the decision of the director.

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.