



U.S. Citizenship
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FILE: [Redacted] Office: VERMONT SERVICE CENTER Date: MAR 21 2006
EAC-04-018-51042

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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:
[Redacted]

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

The petitioner is a software design, development and consultation company. It seeks to employ the beneficiary permanently in the United States as an applications programmer. 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 a bachelor's degree or the equivalent with the major field of study being in Engineering, Computer Science or a related field, as required on the Form ETA 750. The director accordingly denied the petition.

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 October 31, 2001.

On the Form ETA 750B, signed by the beneficiary on October 23, 2001, the beneficiary claimed to have worked for the petitioner beginning in February 2000 and continuing through the date of the ETA 750B. The ETA 750 was certified by the Department of Labor on May 9, 2003.

The I-140 petition was submitted on October 22, 2003. On the petition, the petitioner claimed to have been established in 1995, to currently have an "Est. 100" employees, and to have a gross annual income of "Est. \$6.5 Million." (I-140 petition, Part 5). The item on the petition for net annual income was left blank. With the petition, the petitioner submitted no supporting evidence.

In a request for evidence (RFE) dated March 3, 2004, the director requested evidence relevant to the beneficiary's education and evidence relevant to the petitioner's ability to pay the proffered wage.

In response to the RFE, the petitioner submitted evidence relevant to the issues mentioned in the RFE. The petitioner's submissions in response to the RFE were received by the director on May 24, 2004

In a decision dated August 12, 2004, the director determined that the petitioner had not established that the beneficiary had a bachelor's degree or the equivalent with the major field of study being in Engineering, Computer Science or a related field, as required on the Form ETA 750. The director therefore denied the petition.

On appeal, counsel submits no brief and submits additional evidence. Counsel states on appeal that the beneficiary possess the equivalent of a Bachelor's degree in a conforming and relevant field of study. Counsel also states that the beneficiary possesses, separately and independently "the equivalency of an academic degree

equal to a Bachelor's Degree in terms of the years of experience in sophisticated information systems employment realized as of the date prior to the filing of the labor certification." (I-290B, block 3).

On the I-290B, signed by counsel on September 9, 2004, counsel checked the block indicating that he would be sending a brief and/or evidence to the AAO within 30 days. No further submissions were received from the petitioner until May 3, 2005, when the petitioner submitted a letter dated April 27, 2005 from counsel with an attached copy of a credential evaluation of the beneficiary dated April 24, 2005 by International Credential Evaluators, Inc. (I.C.E., Inc.)

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). Counsel does not explain the reason for the delay beyond 30 days in submitting the credential evaluation by I.C.E., Inc. However the fact that the evaluation is dated April 24, 2005 indicates that the evaluation by I.C.E., Inc., was completed after the 30-day period stated by the petitioner in the I-290B notice of appeal. The record in the instant case provides no reason to preclude consideration of the document newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988). The AAO will accept the late filing on the AAO's own motion.

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 applications programmer. On the ETA 750A submitted with the instant petition, blocks 14 and 15 describe the requirements of the offered position as follows:

- | | | |
|-----|------------------------------|---|
| 14. | Education (number of years) | |
| | Grade School | |
| | High School | |
| | College | Y |
| | College Degree Required | Bachelor's degree or equiv. |
| | Major Field of Study | Engineering, Computer Science or related |
| | Training - yrs | N/A |
| | Experience | |
| | Job Offered | Yrs |
| | Related Occupation | Yrs |
| | Related Occupation (specify) | See Item 15 Above
["Above" referring to the location of item 15
on the ETA 750, Part A] |

15. Other Special Requirements

One year experience in developing client server database applications using PowerBuilder & VC++; six months experience in GUPTA/Centura SQL Windows. Experience may be concurrent.

(ETA 750, Part A, blocks 14 and 15).

The beneficiary states his qualifications on Form ETA 750, Part B. On the ETA 750B submitted with the instant petition, 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
Government Arts College Ooty, Tamil Nadu, India	Chemistry, Math & Physics	12/1980	12/1983	Bachelor of Science Degree
Dept of Comp. Science & Engineering, Annamalaiagar, Tamil Nadu, India	Systems Analysis & Data Processing	1998	1999	Diploma
I.T. Point Software Training Ooty, Tamil Nadu, India	RDBMS (Oracle 7.1)	03/1996	05/1996	Diploma
I.T. Point Software Training Ooty, Tamil Nadu, India	PowerBuilder	06/1996	08/1996	Diploma

(ETA 750, Part B, block 11).

The record contains a copy of an evaluation of the beneficiary's education and experience dated October 23, 2001 by Josef Silny & Associates, Inc. (J.S.A., Inc.) which finds that the beneficiary's education and experience are equivalent to a Bachelor's degree with a major in Computer Information Systems from an accredited university in the United States. The copy of that report submitted for the record is incomplete, consisting of a cover letter from the professor who wrote the evaluation report plus the first page of that report. Copies of certificates, transcripts and letters evidencing the beneficiary's prior education and experience are attached to the report.

Since the copy of the report by J.S.A., Inc., in the record is incomplete, it is not possible to determine exactly the basis for the evaluator's conclusions, but the information in the partial copy is sufficient to show that the evaluator relied on a combination of the beneficiary's education and experience in finding that the beneficiary has the equivalent of a United States Bachelor's degree with a major in Computer Information Systems.

The report by J.S.A., Inc., finds that the beneficiary received a Bachelor of Science degree from the University of Madras in India in 1983, a finding which is supported by copies of transcripts attached to the report. The record contains no documents indicating any studies by the beneficiary at Government Arts College, Ooty, Tamil Nadu, India, as asserted by the beneficiary on the ETA 750B. That evidentiary inconsistency will be discussed below.

The record also contains a copy of an evaluation of the beneficiary's education dated May 3, 2004 by World Education Services, Inc. (W.E.S., Inc.) which finds that the beneficiary's education is equivalent to a high school diploma and four years of undergraduate study in chemistry and systems analysis at a regionally accredited institution in the United States. The report by W.E.W., Inc. finds that the beneficiary's Bachelor of Science degree from the University of Madras with a major in Chemistry is equivalent to three years of undergraduate study in the United States. The report further finds that the beneficiary's Diploma in Systems Analysis and Data Processing from Annamalai University is equivalent to one year of undergraduate study in the United States.

Finally, as noted above, the record contains a copy of an evaluation of the beneficiary's education dated April 25, 2005 by International Credential Evaluators, Inc., (I.C.E. Inc.), which was submitted for the first time on appeal. That report finds that the beneficiary's education is equivalent to a Bachelor of Science degree with course work in Computer Programming from an accredited university in the United States. The report finds that the beneficiary's studies for his Bachelor of Science degree at Madras University are equivalent to three years of post-secondary education in Chemistry from an accredited university in the United States. The report also finds that the beneficiary's studies in computer courses taken at Annamalai University are equivalent to one year of post-secondary education in Computer Programming from an accredited university in the United States.

Each of the evaluation reports bases its findings partially on evidence that the beneficiary received a Bachelor of Science degree from the University of Madras in India in 1983. Copies of transcripts purporting to document the beneficiary's studies at the University of Madras are in the record. The record also contains a "Provisional Certificate – B.Sc." issued to the beneficiary in June 1984 which states that the beneficiary "has qualified for the Degree of Bachelor of Science, he having passed the B.Sc. Degree Examination held in December 1983 . . ." (Provisional Certificate, June [illegible date], 1984). The title of that document as a "Provisional Certificate" indicates that further requirements existed for the granting of the degree. The record contains no document indicating that a degree was granted to the beneficiary. Stamps and address references on the documents in the record from the University of Madras give the university's location as "Chepauk, Madras."

Although the documents in the record indicate studies by the beneficiary at the University of Madras, the beneficiary states on the ETA 750, Part B, that he received a Bachelor of Science degree in 1983 from Government Arts College, Ooty, Tamil Nadu, India. No other documents in the record refer to the Government Arts College, in Ooty, Tamil Nadu.

The Internet Web site of the University of Madras shows that that university has its main campus in Chepauk, in the city of Chennai. The Web site contains no reference to any college known as the Government Arts College. See University of Madras, *Home*, <http://www.unom.ac.in/index.php>; *select Schools* (accessed February 23, 2006). Nor does the Web site contain any reference to a campus in the city of Ooty. *Id.*; *select Campuses* (accessed February 23, 2006).

The Board of Immigration Appeals, in *Matter of Ho*, 19 I&N Dec. 582, 591-592 (BIA 1988), has stated, "It is incumbent on the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice." The record contains no explanation for the inconsistencies in the evidence noted above.

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).

Even assuming that the beneficiary obtained a Bachelor of Science degree from the University of Madras, the evaluation reports in the record fail to establish that the beneficiary's education satisfies the requirements of the ETA 740, Part A.

The evaluation method employed by J.S.A., Inc., in considering the beneficiary's work experience as part of the basis for finding an equivalence to a United States bachelor's degree is similar to a method allowed under the regulations governing H-1B nonimmigrant visas petitions. *See* 8 C.F.R. 214.2(h)(4)(iii)(D)(5). However, the nonimmigrant regulations governing H-1B visa petitions are not applicable to the instant immigrant petition.

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(l)(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. Since the ETA 750 does not require two or more years of experience, the petitioner cannot qualify as a "skilled worker" petition.

A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). In the instant petition, the ETA 750 does not require a specific number of years of college education, nor any specific number of years of other education or training. A diploma is not the same as a "degree." *Cf.* 8 C.F.R. § 204.5(1)(2)

The evaluation reports by W.E.S., Inc., and by I.C.E. Inc., do not rely on the beneficiary's experience to support their findings, but base their findings of U.S. educational equivalency solely on the beneficiary's education. The report by W.E.S., Inc., finds that the beneficiary has the equivalent of four years of undergraduate study in the United States. But the report by W.E.S., Inc., makes no finding that the beneficiary's studies are equivalent to a United States Bachelor's degree, which is a requirement of the ETA 750A.

The evaluation report by I.C.E., Inc., does find that the beneficiary has the equivalent of a United States Bachelor's degree. However, that report relies on the combination of the beneficiary's studies for his Bachelor of Science degree from the University of Madras, which was a three-year program, plus the beneficiary's later studies in computer courses at Annamalai University. The report by I.C.E., Inc., does not find that the beneficiary holds a single foreign degree which is equivalent to a United States Bachelor's degree.

None of the evaluation reports on the beneficiary's education in the record makes findings which satisfy the regulatory definition for a professional in 8 C.F.R. § 204.5(1)(2) or which satisfy the evidentiary requirements in 8 C.F.R. § 204.5(1)(3)(ii)(C) to establish that the beneficiary is a professional.

As noted above the record contains no explanation for the evidentiary inconsistencies concerning which college in India the beneficiary attended for his studies toward a Bachelor of Science degree. Nor do the educational documents in the record show that such a degree was granted to the beneficiary, since the record contains only a "Provisional Certificate" from the University of Madras pertaining to such a degree. Moreover, even assuming that the beneficiary holds a Bachelor of Science degree from the University of Madras, none of the evaluation reports in the record makes a finding that the beneficiary holds a foreign degree which is equivalent to a U.S. bachelor's degree. Regardless of whether the petition sought classification of the beneficiary as a skilled worker or as a professional, the beneficiary had to meet 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.

In his decision, the director found that the evaluation reports then in the record, which were those by J.S.A., Inc., and W.E.S., Inc., failed to establish that the beneficiary had formal education which was equivalent to a Bachelor's degree obtained at an accredited institution of higher education in the United States in one of the fields specified on the labor certification. The director said that, while the beneficiary did have the equivalent of four years of college, he does not have a degree, represented by four years of college in one of the fields specified. The director's analysis of the evidence then in the record was correct, and the director's decision to deny the petition was correct, based on that evidence. For the reasons discussed above, the assertions of counsel on appeal and the evidence submitted on appeal fail to overcome the decision of the director.

The petitioner has not established that the beneficiary has a Bachelor's degree in Engineering, Computer Science or a related field on October 31, 2001, or a foreign equivalent degree.

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.