



U.S. Citizenship
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FILE: [Redacted] Office: CALIFORNIA SERVICE CENTER Date: **MAY 09 2006**
WAC-04-005-51208

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:

SELF-REPRESENTED

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 manufacturer of fine food products. It seeks to employ the beneficiary permanently in the United States as an industrial engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director denied the petition because he determined that the petitioner did not present evidence that the beneficiary had the foreign equivalent of a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

A person named [REDACTED] filed this instant appeal on behalf of the petitioner and the beneficiary. A review of recognized organizations and accredited representatives reported in July 2004 by the Executive Office for Immigration Review, does not mention [REDACTED]. Under 8 C.F.R. § 292.1, persons entitled to represent individuals in matters before the Department of Homeland Security ("DHS"), and the Immigration Courts and Board of Immigration Appeals ("Board"), or the DHS alone, include, among others, accredited representatives. Any such representatives must be designated by a qualified organization, as recognized by the Board. A recognized organization must apply to the Board for accreditation of such a representative or representatives. Therefore, the AAO considers the petitioner self-represented in the instant case.

On appeal the petitioner contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification and submits additional evidence.

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.

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 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 that the minimum of a baccalaureate degree is required for entry into the occupation.

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, which as noted above, is October 12, 2001. *See Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Citizenship and Immigration Services (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). 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, items 14 and 15, set forth

the minimum education, training, and experience that an applicant must have for the position of industrial engineer. In the instant case, item 14 describes the requirements of the proffered position as follows:

14. Education	
Grade School	8
High School	4
College	4
College Degree Required	Bachelor of Science or equivalent
Major Field of Study	Chemistry or related

The beneficiary set forth her credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), she indicated that she attended Nankai University in China in the field of "Analytic Chemistry," from September 1987 through July 1990, culminating in the receipt of a diploma. She provides no further information concerning her educational background on this form, which is signed by the beneficiary under a declaration under penalty of perjury that the information was true and correct. In corroboration of the Form ETA-750B, the petitioner provided copies of the beneficiary's diploma and transcripts issued by Nankai University, Employment Verification Statements from Golden Authentic Business, Ltd., Tian Jin Li Food Product Company, Ltd. and Tian Jin Jin Friendship Canned Food Factory and a credential evaluation drafted by International Evaluation Services, LLC. The translated diploma from Nankai University characterized the beneficiary's degree as a "three-year associate degree."

The credential evaluation was initially submitted with the petition and stated the following:

[The beneficiary] has ten (10) years of documented professional experience in the field of chemistry, which following the three-year-for one [CIS] formula is equivalent of 100 undergraduate credits in the field of chemistry.

In summary, it is the judgment of International Evaluation Services that [the beneficiary] has proven herself to be a competent professional whose professional experience, in conjunction with her educational background, represents the equivalent of a Bachelor of Science degree in Chemistry from an accredited institution in the United States.

Because the evidence was insufficient, the director requested additional evidence (RFE) on July 24, 2004, specifically requesting evidence of the beneficiary's baccalaureate degree or the foreign equivalent of a baccalaureate degree.

In response to the director's RFE, the petitioner's former counsel resubmitted the diploma and credential evaluation previously submitted.

The director denied the petition on November 1, 2004, finding that the petitioner did not establish that the beneficiary possessed a baccalaureate degree or a foreign equivalent of bachelor's degree in Chemistry as required in the submitted form ETA 750.

On appeal, the petitioner asserts that the beneficiary's credentials are sufficient to meet the requirements of the labor certification and submits a new credential evaluation with supporting documents, such as diploma, transcripts. The new credential evaluation submitted on appeal is drafted by [REDACTED], Director

of Evaluations, International Education Consulting, in Washington, DC. Dr. Madan summarizes his findings as follows:

Upon completion of her high school studies, [the beneficiary] was admitted to Tianjin City Friendship Food Technology School for a two-year program in the specialty of food manufacturing. Per Notarial Certificate and School record, she completed the program in July 1981.

In September 1987, [the beneficiary] was admitted to a three –year undergraduate program in the *major of Analytical Chemistry* at Nankai University. She completed the prescribed program in July 1990 and was awarded graduation Diploma by the Nankai University. ...

Based on our analysis of her studies, taking into account the nature of the institution(s), the length of the program, the subjects studied, the scope and duration of each of the courses, and grades earned, it is our judgment that the course of studies completed by [the beneficiary] is equivalent to a *Bachelor of Science with concentration in Analytical Chemistry and Food Processing Technology* from an accredited institution of higher education in the U.S.

(Emphasis in original).

It is noted that the *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides:

[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.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), guiding evidentiary requirements for “professionals,” 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 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 that the minimum of a baccalaureate degree is required for entry into the occupation.

Thus, for petitioners seeking to qualify a beneficiary for the third preference “professional” category, the petitioner must produce evidence that the beneficiary holds a “United States baccalaureate degree or a foreign equivalent degree.” In this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year bachelor of science degree from India as the equivalent of a United States baccalaureate degree. *Id.* at 245.

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 uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language 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.

If supported by a proper credentials evaluation, a four-year baccalaureate degree from China could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. 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); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

The evaluation submitted with the initial filing 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. *See* 8 CFR § 214.2(h)(4)(iii)(D)(5). 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. Since that was not done, the director's decision to deny the petition must be affirmed.

Additionally, the petitioner has not indicated that a combination of education and experience can be accepted as meeting the minimum educational requirements stated on the labor certification, or that experience could be accepted in lieu of educational accolades. Thus, the combination of education and experience, and experience alone, may not be accepted in lieu of education.

The record indicates that the beneficiary does not hold a U.S. bachelor's degree or a foreign equivalent degree and that the beneficiary did not complete the required number of years of college education.

The new credentials evaluation states that the beneficiary's diploma is the equivalent to three years undergraduate study in an accredited U.S. college or university. A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. at 245. Therefore, the beneficiary's diploma from a three-year program cannot be considered a foreign equivalent degree. Moreover, the ETA 750 specifically requires four years of college education. The beneficiary's three years of undergraduate studies does not satisfy the four-year requirement.

The new credentials evaluation also states that the beneficiary completed a two-year program at Tianjin City Friendship Food Technology School (TCFFTS). However, the record does not demonstrate the certificate from TCFFTS is a single academic degree that is a foreign equivalent degree to a U.S. bachelor's 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 U.S. baccalaureate degree. The combination of a degree deemed less than the equivalent to a U.S. baccalaureate degree and a diploma or certificate does not meet that requirement.

Further, the credentials evaluation does not conclude that the beneficiary's course of instruction that led to the certificate to be the equivalent of any specific amount of time spent at a U.S. college or university. Therefore, the petitioner has not established that the beneficiary has the required number of years of college education.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses a 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 met that burden.

ORDER: The appeal is dismissed.