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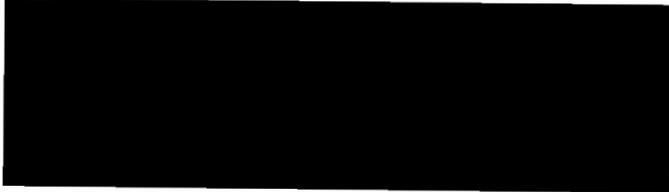
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U.S. Citizenship
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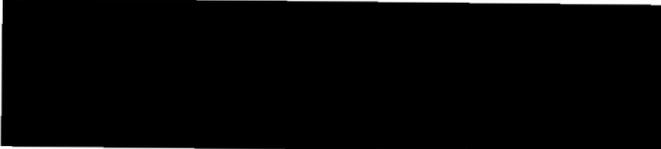


FILE: EAC-04-069-51890 Office: VERMONT SERVICE CENTER Date: MAY 23 2006

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:



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 Acting Center Director (Director), Vermont Service Center. Now the matter is before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a POS systems software development firm. It seeks to employ the beneficiary permanently in the United States as a systems software developer. 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 she determined that the petitioner did not present evidence that the beneficiary possessed the necessary academic requirements to perform the duties of the proffered position.

On appeal, the petitioner's counsel contends that the beneficiary's credentials are sufficient to meet the requirements of the labor certification and submits additional evidence.¹

Section 203(b)(3)(A)(i) of the Act 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 nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) also 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. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this case, that date is July 5, 2002.

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, Citizenship and Immigration

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). The AAO will first evaluate the decision of the director, based on the evidence submitted prior to the director's decision. The evidence submitted for the first time on appeal will then be considered.

Services (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 systems software developer. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	
	High School	4
	College	4-6
	College Degree Required	BS/MS
	Major Field of Study	Computer Science
	Training	
	No. Yrs.	1
	No. Mos.	
	Type of Training	Network or POS systems/sw

The applicant must also have one year of employment experience in the job offered or the related occupation of general systems and software development, or network management.

The beneficiary set forth his credentials on Form ETA-750B signed on June 30, 2002. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), he indicated that he attended Angelicum University in Rome, Italy in the field of "Philosophy" from June 1993 through June 1997, culminating in the receipt of a "Licenza", and was also attending Suffolk University in Boston, MA in the field of "Computer Science" from September 2000 to present, expecting the receipt of a "MS/Computer Science" degree in 2003. He provides no further information concerning his 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 a letter and transcripts from Suffolk University, and a certificate of licence and transcripts from Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe <Angelicum>.

On July 29, 2004, the director issued a request for additional evidence (RFE). The director specially requested an advisory evaluation of the beneficiary's formal education with detailed instructions. In response to the RFE, the petitioner submitted English translations of Polish General Secondary School Certificate and Certificate of Pontifical University of Saint Thomas Aquinas, and an advisory letter from the Center for Educational Documentation, Inc. (CED).

The credential evaluation drafted by

Director of CED listed documents that she reviewed and

stated in pertinent parts:

1. Certificate of Completion of General Secondary School [redacted] (Swiadectwo Dojrzałości Liceum Ogólnksztalcacego) stating [the beneficiary] had graduated from the secondary school with specialization in Biology and Chemistry and listing subjects and grades for study and examinations, dated June 1, 1985. This represents completion of a total of 12 years of primary/secondary education and is considered equivalent to a U.S. high school diploma;
2. Certificate issued by the Pontifical University of Saint Thomas Aquinas on September 7, 2004, stating that [the beneficiary] was enrolled in the Faculty of Philosophy in the academic

years 1995/96 and 1996/97 and upon completion of all examinations [the beneficiary] was awarded the degree of Licence on June 5, 1997. The document lists courses and grades for two years of study.

* * * * *

Based on the above information it can be concluded that [the beneficiary] has the equivalent to a U.S. high school diploma with specialization in Biology and Chemistry and two years of undergraduate study in Philosophy.

The director denied the petition on November 16, 2004, finding that the academic evaluation provided does not support the petitioner's claim that the beneficiary possesses the academic requirements as stated on Form ETA 750.

On appeal, counsel asserts that the beneficiary's credentials are sufficient to meet the requirements of the labor certification and submits a new credential evaluation. Counsel submits two new credential evaluations and states that:

[The beneficiary] was accepted to and enrolled in Suffolk University Master's degree program leading to a Master's degree in Computer Science in May 2002. At the time of his admission to this program, [the beneficiary] possessed, at a minimum, sufficient academic credentials qualifying him for a Bachelor's degree with a major in Computer Science. Indeed, [the beneficiary] would not have qualified for acceptance to a Master's degree program if he had not possessed these requisite academic credentials at the time of his application for admission in May 2002. Thus, on the day of filing of the Form ETA 750 (July 2002), [the beneficiary] possessed the requisite academic credentials by virtue of having completed degree programs in Poland, Italy and the coursework required for the Computer Science major at Suffolk University in the U.S.

Contrary to her first evaluation, the new credential evaluation from [REDACTED] of CED reviewed an additional document for the beneficiary's education. The new document is "Certificate issued by the Major Clerical Seminary, Diocese of Siedlce (Wyższe Seminarium Duchowne, Diecezji Siedleckie) on May 23, 1995, stating that the beneficiary had completed six years of study in Philosophy and Theology (1985-1991) and listing his courses and grades."

In her new evaluation [REDACTED] states the following:

In Poland, Roman Catholic Seminary Education is offered both in minor seminaries (secondary school) and major seminaries (college-level). The Major Clerical Seminary, Diocese of Siedlce offers a six-year part-time study in Philosophy and Theology and upon completion of the program candidates are ordained to the priesthood. At the time of his study (1985-1991), the Diocese of Siedlce was not affiliated with a higher education institution that provided academic training for priesthood candidates toward the title Magister (U.S. Bachelor) and at the time his document was not considered an academic credential. On December 4, 1992, the Seminary was incorporated into the Pope's Theological Faculty in Warsaw and upon completion of studies seminarians were awarded the title Master (Magister) in Theology. His six years of study in Philosophy and Theology (degree was not awarded) can be considered equivalent to a U.S. Bachelor's degree in Theology.

The Pontifical University of Saint Thomas Aquinas in the Vatican is accredited by the Sacred Congregation for Catholic Education and can be considered an accredited university in U.S. terms. It offers a two-year Licence in Philosophy, which requires for admission a Bachelor of Philosophy from a Pontifical University/Faculty or completion of at least two years of study in Philosophy from another country compatible with the Philosophy study in the Vatican system. The Licence in Philosophy can be considered equivalent to a U.S. Master's degree in Philosophy.

Based on the above information it can be concluded that [the beneficiary] **has the equivalent to a U.S. high school diploma with specialization in Biology and Chemistry, a Bachelor of Arts degree in Theology and a Master of Arts degree in Philosophy.**

(Emphasis in original).

new evaluation did not attach the certificate issued by the Major Clerical Seminary, Diocese of Siedlce (Wyższe Seminarium Duchowne, Diecezji Siedleckiej) on May 23, 1995. The claimed education at the Major Clerical Seminary, Diocese of Siedlce is not supported by the Form ETA 750B. The beneficiary provides no information concerning this educational background on Part 11, when information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities) was elicited and representations made by the beneficiary under a declaration under penalty of perjury that the information was true and correct. [REDACTED] did not provide the reference based on which she concluded that the beneficiary's six-year part-time study in Philosophy and Theology in a non-degree program can be considered equivalent to a U.S. Bachelor's degree in theology.

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) specifies for the classification of a professional that:

(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 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.

[REDACTED] evaluations also provide inconsistent information. Her new evaluation says that the two year Licence in Philosophy program at the Pontifical University of Saint Thomas requires for admission a Bachelor of Philosophy from a Pontifical University/Faculty or completion of at least two years of study in Philosophy from another country compatible with the Philosophy study in the Vatican system. She claims in her revised evaluation submitted on appeal that the Licence in Philosophy can be considered equivalent to a U.S. Master's degree in Philosophy. However, two months earlier she stated in her first evaluation that the

program “requires for admission completion of a university entrance qualification in the student’s country of origin or in Italy” and the program “can be considered equivalent to two years of U.S. undergraduate study in Philosophy.” “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.” Additionally, “Doubt cast on any aspect of the petitioner’s proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition.” *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). The AAO 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. *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988).

On appeal counsel also submits a credential evaluation drafted by ██████████ Professor of Computer Science and Chairman of the Department of Mathematics and Computer Science at Suffolk University in Boston. ██████████ concluded that the beneficiary possessed the academic equivalent of a Bachelor’s of Art or Science degree from an accredited U.S. college or university with a major in Computer Science at the time of his admission to the Master’s degree program in May 2002. ██████████ reasoned for his conclusion as follows:

- (1) At the time of his admission to our Master’s degree program in May 2002, [the beneficiary] possessed a Bachelor of Arts degree in Theology from Wyzsze Seminarium Duchowne in Poland (1991) and a Master of Arts degree in Philosophy from the Pontifical University of Saint Thomas Aquinas in Italy (1997). These two degrees have been evaluated for U.S. degree equivalency by a professional degree evaluator who arrived at the same conclusion.
- (2) At the time of his admission to our Master’s degree program in May 2002, [the beneficiary] has also earned the equivalent of our undergraduate major in Computer Science, having qualified for our Certificate of Computer Science Studies whose prerequisites and requirements are equivalent in substance and scope to the requirements of our undergraduate major in Computer Science.

██████████ did not mention the documents he reviewed for the evaluation. Therefore, it seems that he may have arrived at his conclusion that the beneficiary obtained a Bachelor’s degree in 1991 and a Master’s degree in 1997 and these two degrees are equivalent to U.S. degree based on ██████████ evaluation report. As previously noted, the AAO cannot give ██████████’s evaluation full weight. Furthermore, ██████████ did not explain whether there is any difference in requirements between their Certificate of Computer Science Studies and Bachelor’s Degree in Computer Science, and did not provide the requirements for the certificate of computer science studies. It is noted that the *Matter of Sea Inc.*, 19 I&N at 817, 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.

Based on the evidence submitted, we concur with the director that the petitioner has not established that the beneficiary possesses the equivalent to U.S. Bachelor’s or Master’s degree in Computer Science as required by the terms of the labor certification. Counsel’s assertion on appeal cannot overcome the director’s decision.

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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.