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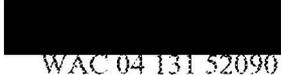
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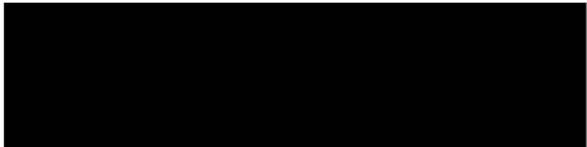
Petitioner:

Beneficiary:



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 telecommunication testing, equipment manufacturer. It seeks to employ the beneficiary permanently in the United States as a software engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the Alien Employment Certification accompanying the petition specified and denied the position accordingly.

On appeal, the counsel submits a brief.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for granting 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.

The regulation at 8 CFR § 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.

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 granting 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)(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.”

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

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.

If the petition is for a professional pursuant to 8 C.F.R. §204.5(l), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted for processing on September 10, 2001. The petitioner selected in Part 2, box "e" of the I-140 petition. That selection states, "A skilled worker (requiring at least two years of specialized training or experience) or professional"

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship & Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, 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, Form ETA 750 A, item 14 describes the requirements of the proffered position and occupation of software engineer as follows:

14.	Education (enter number of years)	
	Grade School	<u>C</u>
	High School	<u>C</u>
	College	<u>C</u>
	College Degree Required	<u>Bachelor of Science</u>
	Major Field of Study	<u>Computer Science</u>
	Training	Blank
	Experience	
	Job Offered	
	Number -Years Mos.	<u>1/0</u>
	Related Occupation	
	Number -Years Mos.	Blank
	Related Occupation	
	Specify	Blank

The employer who is the petitioner has prepared the above ETA 750 A as an essential part of the labor certification process used to support a preference visa petition that is employment based. The employer who desires to employ an alien in the United States must undertake a multiple step process as directed by the United States Department of Labor which, once approved, certifies the Alien Employment Application for the occupation based upon the above criteria. In the present case, the above requirements also state that the occupation of software engineer has a college degree or its equivalent, in the computer science field.

Along with Form ETA 750, Part A, set forth above, the employer also is required to submit Form ETA 750, Part B that is a "Statement of Qualifications of Alien." Part B identifies the alien, specifies his current and prospective address in the United States, his education including trade and vocation training, and lists his work experience.

The Form ETA 750 Part B prepared by the beneficiary states the following education history:

Block 11

Names and Addresses of Schools, Colleges, and Universities Attended (including trade or vocational training facilities)

Myong Ji University, Seoul, Korea

Field of Study	<u>Electronics Engineering</u>
From ...[mo./yr.]	<u>MAR 1990</u>
To ...[mo./yr.]	<u>FEB 1996</u>
Degrees or Certificates Received	<u>B.S. Electronics Engineering</u>

University of California, Berkeley, Berkley, California (USA)

Field of Study	<u>Computer Info Systems</u>
From ...[mo./yr.]	<u>AUG 1999</u>
To ...[mo./yr.]	<u>JAN 2000</u>
Degrees or Certificates Received	<u>Diploma Program Certificate</u>

The petitioner submitted an education evaluation report mentioned below, and, counsel provided a description of the beneficiary's relevant industry experience as of the priority date.

On appeal counsel provided copies of the following documents as additional evidence: a legal brief; the beneficiary's resume; a translated summary of SQ Technologies' Ltd. web page; verification of employment of the beneficiary by SQ Technologies Ltd.; the beneficiary's certificate of career with SQ Technologies' Ltd.; CIS Notice of Action documents related to the beneficiary's temporary worker status; a copy of the beneficiary's visa; an educational evaluation report dated February 14, 2005, by the Foundation for International Services Inc.; the beneficiary's educational transcripts; and, Oracle proficiency certificates for training.

As mentioned, the director determined that the petitioner had not established that the beneficiary had the college degree required by the preference classification for which the Alien Employment Certification accompanying the petition specified and denied the position accordingly on January 5, 2005.

On appeal, the counsel asserts that the beneficiary's combined professional experience and educational background equates to a Bachelor's degree in computer science. Counsel raises an issue concerning "apparent inconsistencies in dates of education and work experience but this issue was not raised in the director's decision and it will not be discussed here.

Petitioner's clear intent is expressed in the certified Alien Employment Application. A bachelor's of science college degree is required in the computer science field of study. Note that even if this petition were considered under the skilled worker regulations, the result would be the same. While it is clear that regulations governing the skilled worker classification do not contain a baccalaureate degree requirement, CIS is still bound by the regulations and above-cited case law to require the petitioner and beneficiary to meet the requirements specified on the ETA-750. See 8 C.F.R. § 204.5 (1)(3)(i)(B). Regardless of classification, the ETA-750 contains the requirements that the beneficiary must have a bachelor's of science college degree is required in the computer science field of study.

The petitioner submitted an educational evaluation report dated February 14, 2005, by the Foundation for International Services Inc., of the beneficiary's foreign schooling and education received in the United States as it equates to a higher education offered in the United States. The evaluation stated in pertinent part:

[The beneficiary] has the equivalent of a bachelor's degree in electrical engineering with a specialization in electronics from ... a university in the United States and has, as a result of his educational background and employment experiences (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in computer science from ... [an] university in the United States.

The subject Form ETA 750 Part A requires a degree from a college and the completion of baccalaureate of science studies in computer science. CIS regulations do not provide that a combination of education and experience may be accepted in lieu of a four-year degree. While the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) do state that the "relevant post secondary education may be considered as training for the purposes of this paragraph;" there is no regulation that would allow for a converse, that the experience may be considered for education requirements.

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). In this instance, by petitioner's credential evaluator, the beneficiary has the equivalent of a bachelor's degree in electrical engineering with a specialization in electronics from ... a university in the United States. This matter is not in dispute.

However, CIS and the AAO does not accept the evaluator's further opinion that a combination of education and experience equate to a bachelors of science degree in computer science as, that is "... a result of his educational background and employment experiences (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in computer science from ... [an] university in the United States."

Counsel contends that job experience together with the above mentioned diploma course taken at the University of California at Berkley satisfies the educational requirement for the preference category. Despite counsel's arguments, CIS will not accept a degree equivalency when a labor certification plainly and expressly requires a Bachelors of Science degree in computer science, as is the present case.

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) and 8 C.F.R. § 204.5(l)(3)(ii)(C). Although certain regulations for temporary worker status allow a combination of education and experience, the immigrant visas (employment based third preference) regulations do not.

The above regulations at 8 C.F.R. § 204.5(l)(3)(ii)(C) use a singular description of foreign equivalent degree. Thus, for professionals, 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.¹

¹Certain nonimmigrant visas do allow a combination of education and experience. See 8 C.F.R. § 214.2

The petitioner failed to submit evidence sufficient to demonstrate that the beneficiary has a United States baccalaureate or an equivalent foreign degree required by the preference classification for which the Alien Employment Certification accompanying the petition specified. The instant petition, submitted pursuant to 8 C.F.R. §204.5(i), may not be approved.

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.