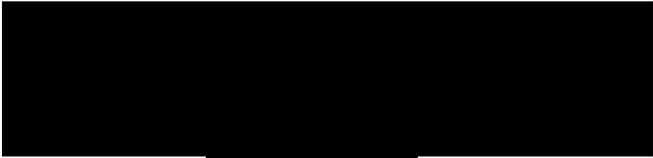




U.S. Citizenship
and Immigration
Services

PUBLIC COPY
identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy



Blc

FILE: [Redacted]
EAC-05-140-52590

Office: VERMONT SERVICE CENTER

Date: JAN 29 2007

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

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 employment-based immigrant visa petition¹ was denied by the Acting Center Director (Director), Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a software consultancy and development firm. It seeks to employ the beneficiary permanently in the United States as a computer programmer, pursuant to Section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(i). As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (Form ETA 750 or labor certification), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a “B.S. or equivalent.”

On appeal, counsel asserts that the “equivalent” annotation of the educational requirements on the labor certification meant that the petitioner would accept a combination of education and experience as an equivalent to a single four-year baccalaureate degree, and that the director’s construction of statutory and regulatory language are contrary to legislative intent as well as recent case law.

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. While no degree is required for this classification, the regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification must be accompanied by evidence that the beneficiary “meets the education, training or experience, and any other requirements of the individual labor certification.”

The issue before us is whether the beneficiary meets the job requirements of the proffered job as set forth on the labor certification. The regulations specifically require the submission of such evidence for this classification. 8 C.F.R. § 204.5(l)(3)(B) (“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”). As noted above, the ETA 750 in this matter is certified by DOL.

To determine whether a beneficiary is eligible for a preference immigrant visa, Citizenship and Immigration Services (CIS) must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. 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, Madany*, 696 F.2d at 1008; *K.R.K.*

¹ The instant petition was re-filed by the petitioner on the behalf of the same beneficiary. The previous petition (EAC-03-220-52440) was filed on July 1, 2003 to classify the beneficiary under section 203(b)(3)(ii) as a professional and denied by the director of the Vermont Service Center on January 18, 2005 because the petitioner did not establish that the beneficiary possessed the equivalent Bachelor’s Degree required by the Form ETA 750 when using only formal education in determining the equivalency. The petitioner appealed the director’s decision to the AAO on February 18, 2005. The AAO dismissed the appeal and affirmed the decision of the director on October 14, 2005. While the appeal was pending with the AAO, the petitioner filed the instant petition with the Vermont Service Center on April 15, 2005.

Irvine, Inc., 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

The key to determining the job qualifications specified in the labor certification is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. It is important that the ETA-750 be read as a whole. The instructions for the Form ETA 750A, item 14, provide:

Minimum Education, Training, and Experience Required to Perform the Job Duties. Do not duplicate the time requirements. For example, time required in training should not also be listed in education or experience. Indicate whether months or years are required. Do not include restrictive requirements which are not actual business necessities for performance on the job and which would limit consideration of otherwise qualified U.S. workers.

Regarding the minimum level of education and experience required for the proffered position in this matter, Part A of the labor certification, as filled in by the petitioner, reflects the following requirements:

14.	Education	
	Grade School	Complete
	High School	Complete
	College	4
	College Degree Required	Bachelor Degree or equivalent
	Major Field of Study	Computer Science

The applicant must also have two years of employment experience in the job offered or in the related occupation of software engineering, system analysis, or computer program design and development. In a separate amendment to Item 14 the petitioner defined "or equivalent" as "any combination of education and/or experience as determined by an Evaluation Service to be equivalent to a U.S. baccalaureate degree in Computer Science."

The beneficiary set forth his credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, colleges and universities attended (including trade or vocational training facilities), he indicated that he attended Ateneo de Manila University in Manila, Philippines in the field of "General Arts," culminating in the receipt of a "B.A." degree in 1985; and that he received certificates in computer related fields in 1985, 1986 and 1988 from STI Computer Education, Technology & Livelihood Resource Center and Institute of Advanced Computer Technology in the Philippines. 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.

On the Form ETA 750B, the beneficiary also set forth his work experience. He listed his experience as a "Programmer" at the petitioner;² as an "Analyst/Programmer" at CARE International in Manila, Philippines from January 1996 to July 1996; as a "MIS Officer" at CARE International, in Kampala, Uganda from April

² However, the beneficiary did not provide the starting and ending dates of his employment with the petitioner on the Form ETA 750.

1993 to July 1995; and as an “Analyst/Programmer at CARE International in Manila, Philippines from October 1987 to March 1993.

In corroboration of the “Bachelor Degree or equivalent” requirements on the Form ETA-750, the petitioner provided a copy of the beneficiary’s Bachelor of Arts degree and transcripts from Ateneo de Manila University and certificates in computer related training. The degree and transcripts indicate that the beneficiary attended Ateneo De Manila University for four years from 1981 to 1985 in Arts and Sciences and obtained a Bachelor of Arts degree in the Philippines on March 30, 1985. Two Evaluation Reports from Multinational Evaluation & Translation Services, Inc. (METS) and Medgar Evers College of the City University of New York (CUNY) are also in the record of proceeding. However, the record does not contain any evidence showing that METS is a member of the National Association of Credential Evaluation Services (NACES). The U.S. Department of Education refers individuals seeking verification of the equivalency of their foreign degrees to American degrees through private credential evaluation services to NACES. The objective of NACES is to raise ethical standards in the types of credential evaluations provided by the private sector. In light of the AAO’s findings concerning the beneficiary’s educational program, the credential evaluation provided by METS carries little evidentiary weight in these proceedings.

The CUNY evaluation was drafted by [REDACTED] Professor of Computer Information Systems (Prof. [REDACTED]), on November 6, 2003. Prof. [REDACTED] stated the following in his evaluation report:

[The beneficiary] has completed approximately five years and six months of work experience and training in positions of progressively increasing responsibility and sophistication, characterized by the theoretical and practical application of specialized knowledge under superiors, together with peers, with baccalaureate-level training in computing and related areas. At the equivalency ratio of three years of work experience for one year of college training, promulgated by the United States Citizenship and Immigration Services of the United States Department of Homeland Security (“USCIS”), [the beneficiary] completed, in time equivalence, at least one year of the study required in connection with the attainment of a bachelor’s degree, in addition to his completion of a Bachelor of Arts Degree from Ateneo de Manila University. Due to the concentrated nature of his work experience and training in computer science and related areas, it is my opinion that [the beneficiary]’s background would be comparable to university-level training in computer science.

Based on the reputation of Ateneo de Manila University, the number of years of coursework, the nature of the coursework, the grades attained in the courses, and the hours of academic coursework, as well as approximately five years and six months of professional training and work experience in computing, it is my judgment that [the beneficiary] received the equivalent of a Bachelor of Science Degree in Computer Science from an accredited institution of higher education in the United States.

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, the Service 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 in the record 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 for classification as professional. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). 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. The beneficiary’s equivalence in the instant case comes from a combination of a bachelor degree in a non-related field and five years and six months of work experience in a computer-related field. Therefore, the evaluation report does not establish that the beneficiary possessed credentials equivalent to a US bachelor’s degree in computer science to qualify as a professional.

However, the instant petition was filed to classify the beneficiary as a skilled worker. The regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification “must be accompanied by evidence that the alien meets the educational, training or experience, and other requirements of the individual labor certification.” As noted previously, the certified Form ETA 750 requires four years of college studies, Bachelor’s degree or equivalent in computer science, and two years of experience in the job offered or in related occupations. The certified labor certification also defines the equivalent as “any combination of education and/or experience as determined by an Evaluation Service to be equivalent to a U.S. baccalaureate degree in Computer Science.” The singular degree requirement is not applicable to skilled workers and the regulation governing skilled workers only requires that the beneficiary meet the requirements of the labor certification in addition to showing two years of qualifying employment experience. The labor certification in this case expressly permits the combination of education and employment experience as evaluated by a credential evaluator to be equivalent to a U.S. bachelor degree in computer science. The submitted evaluation report from Prof. [REDACTED] asserts that a combination of the beneficiary’s education and five years and six months experience is equivalent to a bachelor’s degree in computer science from an accredited institution in the United States. The beneficiary completed a four-year bachelor’s degree and over eight years of experience in computer-related fields and three computer certificates. Therefore, the AAO finds that the

beneficiary meets the educational requirements specifically set forth on the certified labor certification in the instant case.

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) of 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.

An experience letter from CARE as a former employer was submitted in support of the beneficiary's qualifications for the proffered position. The letter was dated August 1, 1997 and signed by [REDACTED] as Acting Country Director, CARE-Philippines. Mr. [REDACTED] letter stated in pertinent part that:

This is to certify that [the beneficiary] was an employee of CARE USA from October 16, 1987 to July 8, 1996, occupying various MIS positions within the organization as follows:

Analyst/Programmer, CARE Philippines, October 16, 1987 – March 15, 1993
MIS Officer, CARE Uganda, April 17, 1993-July 23, 1995
Analyst/Programmer, CARE Philippines, January 8 –July 8, 1996

As Analyst/Programmer-MIS Officer, his main functions were to maintain our accounting software, design and develop software applications like Payroll, Inventory, Food Monitoring, using FOXPRO, handle computer hardware maintenance, review, and purchases.

The proffered position in the instant case is computer programmer. The Form ETA 750 requires two years of experience in the job offered or two years of experience in related occupations of software engineering system analysis, or computer program design and development. This experience letter is on company letterhead with the company's address and contact information, and the letter was dated August 1, 1997 and signed by [REDACTED], Acting Country Director, CARE-Philippines. The letter verifies the beneficiary's employment experience with that company for more than eight years from October 16, 1987 to July 8, 1996, and also includes the beneficiary's titles and job descriptions. The AAO finds that this experience letter meets the requirements for evidence of the beneficiary's prior experience as set forth at 8 C.F.R. § 204.5(g)(1).

Therefore, the petitioner has demonstrated that the beneficiary meets the requisite education and work experience requirements set forth on the Form ETA 750.

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 met that burden.

ORDER: The appeal is sustained. The petition is approved.