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U.S. Citizenship
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JUL 31 2007

File: LIN-06-097-52024 Office: NEBRASKA SERVICE CENTER Date:

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 Director, Nebraska Service Center (“director”), denied the immigrant visa petition. The matter is now before the Administrative Appeals Office (“AAO”) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a home health care business, and seeks to employ the beneficiary permanently in the United States as a medical and health services manager (“Quality Assurance Coordinator”). As required by statute, the petition filed was submitted with Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). As set forth in the director’s March 27, 2006 decision, the case was denied based on the petitioner’s failure to demonstrate that the beneficiary had the education required by the certified ETA 750.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989) (noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.¹

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

The petitioner has filed to obtain permanent residence and classify the beneficiary as a professional. The regulation at 8 C.F.R. § 204.5(1)(2) provides that a third preference category professional is 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.”

On March 27, 2006, the director denied the petition as the petitioner did not demonstrate that the beneficiary had the required number of years of education to meet the requirements of the certified ETA 750. The petitioner appealed and the matter is now before the AAO.

In evaluating the beneficiary’s qualifications, Citizenship and Immigration Services (“CIS”) must look to the job offer portion of the alien 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). 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).

On the Form ETA 750A, the “job offer” position description provides:

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).

Review and implement quality assurance standards and study existing policies for home health care company. Review and evaluate patient medical records & provide guidance & training to health care professionals treating patients & confirm patient treatment plans. Interact with other members of quality assurance department, doctors, & field staff. Must prepare clinical documentation guides & training materials for staff use, monitor compliance with procedures, and conduct satisfaction surveys.

Further, the job offered listed that the position required:

Education:	Bachelor's
College:	4 years
Major Field Study:	Nursing, Pharmacy, Health Administration, or an equivalent degree.
Experience:	1 year in the job offered, Quality Assurance Coordinator, or 1 year in a related occupation of any related occupation in the health care field which included experience in training/education of health care staff, management & quality assurance programs.

The petitioner did not list any other special requirements.

On the Form ETA 750B, signed by the beneficiary on September 16, 2003, the beneficiary listed prior education as: University of San Agustin, Iloilo City, Philippines, 1989 to 1992, Bachelor of Science, Pharmacy.

The petitioner submitted an academic equivalency evaluation from Morningside Evaluations and Consulting. The evaluation concluded that the beneficiary had the equivalent of a Bachelor of Arts in Health Administration based on consideration of the beneficiary's academic studies and six years of experience and training. The evaluation stated that the beneficiary completed three years of academic coursework. The petitioner additionally submitted the beneficiary's transcripts for studies completed between 1988 and 1992, a board of pharmacy certificate that the beneficiary was registered and entitled to practice as a pharmacist, as well as a number of certificates of recognition for training, which the beneficiary received from her employer, the Lung Center of the Philippines, Quezon City, Philippines.

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(1)(2). The regulation at 8 C.F.R. § 204.5(1)(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.

A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). The director concluded that the beneficiary did not have the requisite U.S. baccalaureate

degree or foreign equivalent degree as the petitioner specifically listed that the position required four years of education, and the evaluation listed that the beneficiary only had three years of college.

On appeal, counsel provides, “the I-140 denial was based on an erroneous finding that [REDACTED] the beneficiary, did not have a 4 year Bachelor’s degree, when in fact, she did have a 4 year Bachelor’s degree in Pharmacy.” Counsel asserts that the evaluation was in error, a mistake, which was not noticed at the time that the petition was submitted. However, counsel asserts that it is evident from the beneficiary’s transcript provided that the beneficiary did in fact complete four years of college.

In support, the petitioner has provided a copy of the beneficiary’s degree listing that she attained a Bachelor of Science degree in Pharmacy in March 1992. Additionally, the petitioner provided another copy of the beneficiary’s transcript, which exhibits that the beneficiary began her studies in 1988 and completed two semesters in the 1988 to 1989 academic year; two semesters in the 1989 to 1990 academic year; two semesters in the 1990 to 1991 academic year; and two semesters in the 1991 to 1992 academic year, which would equate to four years of college. The petitioner also provided a revised evaluation that stated based on her education alone, without reference to her additional work experience, that the beneficiary had the equivalent of a Bachelor’s degree in Pharmacy.

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. As the transcripts and other evidence demonstrate that the beneficiary completed four years of college, we find that the petitioner has overcome the grounds for the petition’s denial. Therefore, on appeal, the petitioner has overcome the director’s decision and established that the beneficiary has the required education as listed on the certified Form ETA 750.

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