

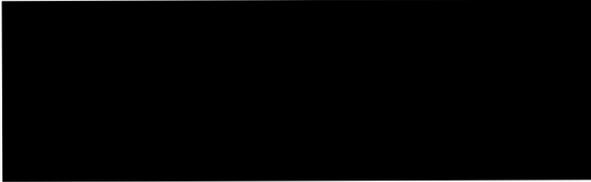
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U.S. Citizenship
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FILE: [REDACTED]
EAC-04-037-55585

Office: VERMONT SERVICE CENTER

Date: SEP 29 2008

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:

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

The petitioner is a clothing company. It seeks to employ the beneficiary permanently in the United States as a systems accountant (financial analyst/chief accountant). As required by statute, a Form ETA 750,¹ Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not qualify for the position offered at the time of filing. Specifically, the director determined that the beneficiary did not complete the required American Institute of Certified Public Accountants (AICPA) Ethics Examination to obtain his certificate as a Certified Public Accountant (CPA) until June 5, 2002. The director denied the petition accordingly.

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.

As set forth in the director's February 28, 2006 decision, the primary issue in the current petition is whether the beneficiary was a CPA as set forth on the Form ETA 750 for the proffered position on or prior to the priority date.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), 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) of the Act also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

On appeal the petitioner asserts that all states use the four-part Uniform CPA Examination prepared by the AICPA; that the AICPA, as the only official authority to award COPA licenses, had accepted the beneficiary as their official member by issuing him a certificate of membership dated June 15, 2002; that the beneficiary had successfully completed the course "Professional Ethics for CPAs on June 5, 2002, and therefore, the beneficiary should be deemed a CPA at the time of filing.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and 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, *Madany 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).

¹ After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

In the instant case, 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 financial analyst/chief accountant. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	Completed
	High School	Completed
	College	Completed
	College Degree Required	Bachelor of Commerce
	Major Field of Study	Accounting

The applicant must also have two years of experience in the job offered or in a related occupation of public accounting. The duties of the proffered position are delineated at Item 13 of the Form ETA 750A and need not be recited in this decision. Item 15 of Form ETA 750A states the following as other special requirements:

Must be [a] CPA. Must have 2 years consulting experience. Must be proficient in the use of wide range of programming languages including cobol-10, Algol, WFI, and SAP. Must have a working knowledge of U.K. accounting system.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.² On appeal, the petitioner submits a brief and a letter dated June 15, 2000 from AICPA (AICPA June 15, 2000 letter) and a copy of the beneficiary's AICPA member card. Other relevant evidence in the record includes a letter dated January 31, 2000 from CPA Examination Services (CPA Examination Services January 31, 2000 letter), and Certificate of Completion issued by AICPA on June 5, 2002. The record does not contain any further evidence concerning the beneficiary's CPA status.

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). The priority date is the date the Form ETA 750 was accepted for

² 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).

processing by any office within the employment system of the Department of Labor. *See* 8 C.F.R. § 204.5(d). The priority date in the instant petition is August 23, 2000.

As mentioned above, the underlying labor certification expressly requires the candidate to be a CPA. The instant I-140 petition was submitted on November 20, 2003 with the CPA Examination Services January 31, 2000 letter and Certificate of Completion issued by AICPA on June 5, 2002. The CPA Examination Services January 31, 2000 letter notified the beneficiary of his passing all sections of the Uniform CPA Examination and provided instructions on obtaining a certificate as a CPA. The AICPA certificate of completion certifies that the beneficiary successfully completed the course "Professional Ethics for CPAs" on June 5, 2002. The CPA Examination Services January 31, 2000 letter provides the following instructions for the beneficiary to obtain a certificate as a CPA and a permit to practice:

In order to obtain a certificate as a [CPA], you will be required to pass AICPA's ethics examination which may be requested by calling (800) 862-4272. In addition, you must complete the enclosed form and return it to the Delaware State Board of Accountancy with the required payment.

You will be eligible to apply for a permit to practice when you are able to provide documentation that you have met Delaware's experience requirement. Applications for a permit to practice may be obtained by contacting the office of the Board at (302) 739-4522, extension 218.

The petitioner did not submit evidence showing that the beneficiary passed AICPA's ethics examination prior to the priority date in the instant case with the initial filing. In response to the director's request for evidence (RFE) issued on April 5, 2005, the petitioner did not submit any evidence showing that the beneficiary completed his AICPA's ethics examination, nor did the petitioner submit the beneficiary's certificate of CPA from any state in the United States. The record does not contain any evidence showing that the beneficiary has ever been certified as a CPA by any state in the United States, including Delaware, the state for which the beneficiary took and passed the CPA examination prior to the priority date of August 23, 2000 in the instant case. While this office concurs with the petitioner's assertion that it is not necessary for the petitioner to submit any license for the beneficiary to establish the beneficiary's qualifications because the labor certification does not require any license, the certified ETA 750 clearly requires a CPA and therefore, without a CPA certificate issued by any state in the United States to the beneficiary before August 23, 2000, the petitioner failed to demonstrate that the beneficiary possessed the requisite qualifications for the proffered position prior to the priority date.

On appeal, the petitioner submits a letter from AICPA accepting the beneficiary as its member before the priority date as evidence to demonstrate that the beneficiary was a CPA prior to the priority date and therefore, qualified for the proffered position at the time of filing. However, the petitioner's assertion that the AICPA is the only official authority to award CPA licenses and therefore, the membership of the AICPA can prove the beneficiary's CPA status is unsupported.³ Going on record without supporting documentary

³ This office accessed the AICPA website and found that the AICPA is the national, professional organization

evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Furthermore, the record does not contain evidence submitted by the petitioner that the beneficiary was automatically certified as a CPA after he passed the four-part of the Uniform CPA Examination but had not passed the AICPA's Ethics Examination yet according to the Delaware regulations. In the instant case, the record shows that the beneficiary took and passed the CPA examination for Delaware Board of Accountancy. The beneficiary also passed the AICPA's Ethics Examination for Delaware Board although that was on June 5, 2002, almost two years after the priority date.⁴

for all CPAs; it provides members with the resources, information, and leadership that enable them to provide valuable services in the highest professional manner to benefit the public as well as employers and clients; and it seeks the highest possible level of uniform certification and licensing standards and promotes and protects the CPA designation; however, it does not award CPA licenses or certificates. See <http://www.aicpa.org/About+the+AIOCPA/AICPA+Mission> (accessed on August 12, 2008). In addition, the AICPA offers different types of membership: regular member for people who passed the CPA exam and are certified to practice; associate member for people who passed the CPA exam but are not yet certified; non-CPA faculty associate for any non-CPA accounting faculty member teaching at a college or university; international associate, student affiliate, CPA candidates for students or recent graduates who have not yet passed the CPA Exam; non-CPA section associate for any non-CPA professional employed and sponsored by a CPA firm in an Institute-approved practice-monitoring program may enroll in any of the AICPA's four voluntary sections and voluntary membership sections for Information Technology (IT), Tax (TAX), Personal Financial Planning (PFP), and Forensic and Valuation Services (FVS). See <http://www.aicpa.org/About+the+AIOCPA/Membership+Information/Membership+Categories+and+Benefits+and+Requirements.htm> (accessed on August 12, 2008). Therefore, the AICPA's membership cannot evidence that the beneficiary was certified as a CPA prior to the priority date.

⁴ The official website for the State of Delaware, Department of State, Division of Professional Regulation, Board of Accountancy at <http://www.dpr.delaware.gov/boards/accountancy/newcertificate.shtml> (accessed on August 12, 2008) states in pertinent part regarding new CPA certificate that:

New CPA Certificate

HOW TO APPLY FOR A CPA CERTIFICATE

If you applied to take the CPA examination prior to January 1, 2006, you are eligible to apply for the CPA Certificate. If you apply to take the CPA examination after January 1, 2006, see the instructions for applying for the [CPA Certificate and CPA Permit to Practice](#) or (615) 880-4263.

When your application is complete, the Board will review it at the next scheduled meeting.

AICPA Ethics Examination

After you pass all four parts of the CPA examination, you must complete The American Institute of Certified Public Accountants (AICPA) self-study course entitled *Professional*

Without a certificate of CPA issued by the Delaware Board of Accountancy prior to the priority date, the petitioner failed to establish that the beneficiary met the CPA requirement and thus qualified for the proffered position prior to the priority date. The record does not contain the beneficiary's certificate of CPA issued by any other state prior to the priority date based on his CPA examination taken in Delaware. In visa petition proceedings, the burden is on the petitioner to establish eligibility for the benefit sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966). The petitioner must prove by a preponderance of evidence that the beneficiary is fully qualified for the benefit sought. *Matter of Martinez*, 21 I&N Dec. 1035, 1036 (BIA 1997); *Matter of Patel*, 19 I&N Dec. 774 (BIA 1988); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). Therefore, the petitioner did not establish with

Ethics: The AICPA Comprehensive Course and pass the examination with a score of not less than 90%. The AICPA website is www.aicpa.org. Contact AICPA directly at (888) 777-7077.

Applying for a CPA Certificate

After you have passed the CPA examination and the AICPA Ethics exam, submit the following:

- Completed, signed and notarized Application for Original or Reciprocal Certificate.
- Check or money order for the non-refundable processing fee made payable to "State of Delaware." Payment must be US funds and drawn on a US bank.
- Ethics examination score sent directly from the AICPA to the Board office.
- If you were *not* a Delaware candidate when you sat for the CPA examination, one of these proofs of your education:
 - If you were educated in the U.S., college or university transcript sent directly from the college or university to the Board office.
 - If you attended a college outside of the U.S., evaluation of your transcript by the Foreign Academic Credentials Service, Inc. (FACS) sent directly from FACS to the Board office. The FACS website is www.facsusa.com. Contact FACS at (618) 656-5291.

(If you sat for the examination as a Delaware candidate, the CPA examination service will forward your transcript/evaluation to the Board office service after you have passed all four sections of the examination.)

- If you were *not* a Delaware candidate when you sat for the CPA examination, CPA examination scores sent directly from the State in which you sat for the examination to the Board office. (If you sat for the CPA examination as a Delaware candidate, the CPA examination service will forward your scores to the Board office service after you have passed all four sections of the examination.)

sufficient evidence that the beneficiary met all the special requirements set forth in Item 15 of the Form ETA 750, and further failed to establish that the beneficiary was qualified for the proffered position at the time of filing the labor certification application. The petitioner's assertions on appeal fail to overcome the ground of denial in the director's decision. The materials on continuing education for those already certified are not relevant to the requirements to become certified in the first place. The director's decision must be affirmed.

Beyond the director's decision and counsel's assertions on appeal, the AAO has identified an additional ground of ineligibility and will discuss whether or not the beneficiary holds a bachelor's degree or a foreign equivalent degree in accounting to qualify for the proffered position under the professional category. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*. 345 F.3d 683 (9th Cir. 2003); *see also 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 ETA 750 in the instant case was filed and certified for the position of financial analyst/chief accountant. DOL assigned the occupational code of 160.167-026, systems accountant, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/crosswalk/DOT?s=160.167-026&g=Go> (accessed August 12, 2008) and its extensive description of the position and requirements for the position most analogous to programmer analyst position, the position falls within Job Zone Four requiring "considerable preparation" for the occupation type closest to programmer analyst position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See* <http://online.onetcenter.org/link/summary/13-2011.01#JobZone> (accessed August 12, 2008). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

Therefore, an accountant position could be properly analyzed as a professional or as a skilled worker since the normal occupational requirements do not always require a bachelor's degree but a minimum of two to four years of work-related experience.⁵ In this case, although the petitioner checked box e in Part 2 of the I-140

⁵ A professional occupation is statutorily defined at Section 101(a)(32) of the Act as including but not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." It is noted that accountant positions are not included in this section.

form, which is for either a professional or a skilled worker, the Form ETA 750 clearly requires a bachelor's degree in accounting, two years of experience and a CPA and it does not indicate that the employer would accept any alternate requirements in lieu of the bachelor's degree requirement. Therefore, the AAO finds that the director properly analyzed this petition under the professional category.

For the professional category, 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.

(Emphasis added.)

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 record shows that the beneficiary possesses a two-year bachelor of commerce degree from the University of the Punjab, a certificate of passing the examination Part II issued by the Institute of Cost and Management Accounts of Pakistan, a certificate of completion of courses in NUIX, COBOL, DB II during the period from April 1988 to January 1989 issued by Islamabad Computer College, a certificate of completion of two years intensive training in full time coursework at the vocational level of Data Base Programmer during the session August 1994 to July 1996 at Star Textile Technical Institute and a certificate of attending a two-day seminar on Mergers, Acquisitions and Business Valuation issued by the National Center for Continuing Education. A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). However, there is no evidence in the record of proceeding that any of these degree and certificates is a single U.S. bachelor's degree or a foreign equivalent degree in accounting as required by the Form ETA 750 in the instant case. Therefore, the petitioner failed to establish that the beneficiary met the minimum educational requirement for the proffered position.

The petitioner asserts that the beneficiary possessed the equivalent to a U.S. bachelor's degree in commerce according to a private credential evaluation from Elegant Business Services Inc. (EBS). The evaluation report from EBS was based on the two year bachelor of commerce from the University of the Punjab, two years of studies at the Institute of Cost and Management Accountants (passing Parts I and II courses), two year diploma from Start Textile Technical Institute, ten months course at Islamabad Computer College and nine years of experience. This evaluation report used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. See 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). In addition, the evaluation report did not evaluate the equivalency of any

single 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).

Therefore, the record does not contain any evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree from a college or university to be qualified as a professional for third preference visa category purposes. Because the beneficiary does not have a “United States baccalaureate degree or a foreign equivalent degree” in accounting, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.