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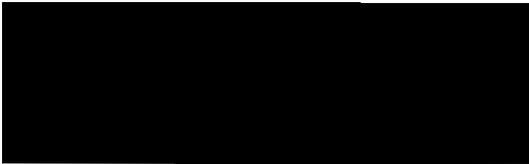
U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of Administrative Appeals, MS 2090
Washington, DC 20529-2090



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Office: TEXAS SERVICE CENTER

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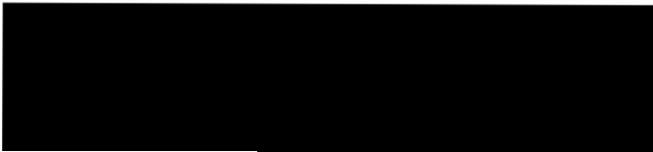
Petitioner:

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.

John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained. The petition will be approved.

The petitioner is a transportation/motor carrier services firm. It seeks to employ the beneficiary permanently in the United States as a programmer analyst. A Form ETA 750, 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's credentials did not satisfy the minimum level of education stated on the labor certification and denied the petition accordingly. Specifically, the director concluded that the beneficiary's bachelor's degree in mechanical engineering was not a related field of study to the major fields of study as specified on the labor certification.

On appeal, the petitioner, through counsel, submits additional evidence related to the beneficiary's education and the field of study of engineering. Counsel contends that the beneficiary's educational credentials satisfied the terms of the labor certification and that the petition should be approved.

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 sole issue on appeal is whether the beneficiary's degree in mechanical engineering is a "related field" to computer science or management information systems (MIS) as required by the labor certification. For the reasons discussed below, we do not concur with the director's denial of the petition in this case and would also note that various decisions by federal circuit courts, which are binding on this office, have upheld our authority to evaluate whether the beneficiary is qualified for the job offered.

As noted above, the ETA 750 in this matter is certified by DOL. Section 212(a)(5)(A)(i) of the Act provides:

In general.-Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible, unless the Secretary of Labor has determined and certified to the Secretary of State and the Attorney General that-

- (I) there are not sufficient workers who are able, willing, qualified (or equally qualified in the case of an alien described in clause (ii)) and available at the time of application for a visa and admission to

the United States and at the place where the alien is to perform such skilled or unskilled labor, and

(II) the employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

According to 20 C.F.R. § 656.1(a), the purpose and scope of the regulations regarding labor certification are as follows:

Under § 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain a visa for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

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, 8 U.S.C. § 1153(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 petitioner must demonstrate that a beneficiary has the necessary education and experience specified on the labor certification as of the priority date, the day the ETA 750 was accepted for processing by any office within DOL's employment system. *See* 8 C.F.R. § 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the ETA 750 was accepted for processing on January 6, 2005. The Immigrant Petition for Alien Worker (I-140) was filed on December 19, 2006.

Part A of the ETA 750 sets forth the minimum requirements for the position of programmer analyst. It reflects the following:



- 14. State in detail the MINIMUM education, training, and experience for a worker to perform satisfactorily the job duties described in Item 13 above.

Education (Enter number of Years)	Grade School	High School	College
	x	x	4
College Degree Required (specify)	Bachelor's or Foreign Equiv.		
Major Field of Study	Computer Sci, MIS or related field		
Training	(none specified)		
Experience	Job Offered	Related Occupation	
	2 yrs	2 yrs	
		Programming/web application development using GIS and/or J2EE technology	

15. Other Special Requirements

Working knowledge of HTML, Java, Cold Fusion MX and Flash MX is required.

Item 13 of the ETA 750A describes the duties of the programmer analyst as:

Design, program maintain and support web-based and Geographic Information Systems (GIS) solutions using advanced object-oriented programming skills with current web technologies and knowledge of GIS layer, asset management, and positional tracking technologies.

In determining whether a beneficiary is eligible for a preference immigrant visa, United States Citizenship and Immigration Services (USCIS) must ascertain whether the alien is, in fact, qualified for the certified job. USCIS 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, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Additionally, the regulation at 8 C.F.R. § 204.5(1)(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.

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 degree of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

As stated on the labor certification, the proffered position requires four years of college culminating in a bachelor's degree or foreign equivalent degree in computer science, MIS or a related field, as well as two years of experience in the job offered or two years in a related occupation defined as programming/web application development using GIS and/or J2EE technology.

The record contains evidence that the beneficiary obtained a four-year bachelor's degree in mechanical engineering from the University of Madras, India in April 1999. Accompanying grade transcripts reflect that this degree included courses taken in computer laboratory, computer aided design & computer aided manufacture (cad/cam), and cad/cam & microprocessor lab.¹

A credential evaluation, dated October 17, 2000 from [REDACTED] of the Multinational Education & Information Services, Inc. was also provided by the petitioner. His evaluation states that the beneficiary's degree from the University of Madras is equivalent to a U.S. bachelor's degree in mechanical engineering. The evaluation also mentions that the beneficiary has training and experience in software engineering, system analysis and computer program design and development but did not conclude that it transformed his degree into a related field of study to computer science or MIS. It suggested

¹ Copies of certificates obtained during the period from 1999 to 2003, provided on appeal, also indicate that the beneficiary completed some professional training in various software such as ColdFusion/Flashmx, Building J2EE Applications with JRun, Java 2 Platform, and Unix C++ Oracle to document that the beneficiary met the "other special requirements."



that a formula of three years of experience equating to one year of university credit was considered but did not explain how this affected the beneficiary's qualifications.

As stated above, we agree that the beneficiary has a foreign equivalent bachelor's degree in mechanical engineering from the University of Madras. However, this would not include using any formula of equating three years of experience for one year of education, which is an equivalence applied to non-immigrant H1B petitions, not to immigrant petitions. See 8 CFR § 214.2(h)(4)(iii)(D)(5). To this extent, [REDACTED]'s opinion is not probative of the beneficiary's educational credentials. 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).

The director denied the petition on February 7, 2007. She determined that the quantity of computer courses completed during the beneficiary's baccalaureate studies at the University of Madras did not provide a sufficient basis to conclude that the beneficiary's degree in mechanical engineering should be considered a related field of study to computer science or MIS. The director also noted that a letter, dated January 10, 2007, from [REDACTED] of Princeton University failed to establish how the skills developed by mechanical engineering students in mechanical component modeling, processing simulation, and applied mechanical analysis are highly analogous to the use of computer programming technologies and GIS platforms deployed in the execution of the duties of a programmer analyst as claimed or equips an applicant to perform the duties of a programmer analyst as set forth on the ETA 750.

It is noted that AAO requested the petitioner to supply evidence of its recruitment efforts that communicated its intent that an engineering or mechanical engineering major was an acceptable qualifying related field of college or university study for a programmer analyst as set forth in this particular case. The response submitted by counsel indicated that the three print advertisements and internal posting notice of the vacancy expressed the requirement of a degree in computer science, MIS or a related field in the same language as the ETA 750. In correspondence directed to DOL related to a request for reduction in recruitment, counsel states that no responses to the petitioner's advertisements were received. Nevertheless, counsel asserts that job applicants for such a position would naturally connect a degree in engineering to an IT job requiring a related field of study to computer science or MIS.

As evidence of this assertion, counsel submits affidavits from four of the petitioner's current employees, who all believed that their engineering degrees related to a degree in computer science.² As noted in copies of the petitioner's job descriptions provided, the four positions that they applied for were logistics analyst 1, data warehouse DBA, PC Programmer, and Senior Programmer/Analyst (Java), respectively. It is noted that all of the job descriptions

² The first employee's resume included with these documents did not list any degree at all.

failed to even specify that a related field of study to computer science or MIS was acceptable. The logistics analyst, data warehouse DBA, and PC Programmer positions all listed specified majors with no related field of study and offered either “or equivalent experience” or “or commensurate work experience” as an alternative to formal education. The Senior Programmer/Analyst job did not require any field of study at all and merely stated that a “minimum amount is a 4-year college degree or equivalent to develop skills used with the development process.” As it is unknown whether these applicants were hired based on education or experience, these submissions have limited probative value relating to whether a mechanical engineering degree is a related field of study to a degree in computer science or MIS for a job as a programmer analyst.

Similarly, counsel also submitted job applications and position descriptions of three of the petitioner’s former employees. Two of the jobs were for a data warehouse DBA as stated above with the same educational requirements of a bachelor’s degree in computer science or MIS and both offered “or commensurate work experience.” The third job was for an EDI programmer/analyst and also offered “or equivalent experience” as an alternative to a bachelor’s degree. None of these job descriptions indicated that a related field of study was acceptable, moreover, it is unclear what criteria the petitioner relied upon in hiring these former employees.

Counsel also provided multiple copies of job applications for various positions which are submitted under the category of “applicants considered but not hired.” None of the jobs were described in the same way as in the instant position. All but three included an experiential alternative to formal education as set forth in the job description, so it is unknown if the applicant was applying based on his experience or education. The reasons for rejection are also unknown. Two of the three applications that listed a related field of study as acceptable to a bachelor’s in computer science were for a “net developer 1.” In one case, the applicant actually possessed a computer engineering degree from Brigham Young University, so it cannot be considered as analogous to an applicant with a mechanical engineering degree applying for a programmer analyst position. In the other application for a net developer 1 presented by a staffing company, the applicant had a bachelor’s of engineering in electronics and communications obtained from Madras University in India, not a bachelor’s in mechanical engineering. The third job description that advertised that a comparable discipline to a bachelor’s degree in MIS, or computer science would be acceptable was for a position as a project analyst. The resume submitted indicated that the applicant possessed a bachelor of science degree in mechanical engineering from Michigan Technological University. Although it is unknown whether this applicant had taken any IT classes in his course of study, at least as related to this job, his application suggests that he considered his degree to be in a comparable discipline to MIS or computer science.

That said, the petitioner has also submitted letters from two staffing agencies. The first letter is dated April 3, 2009 and is from Connect IT Staffing. It is signed by [REDACTED] its owner and president. [REDACTED] states that he works primarily with IT professionals

and that he has worked with the petitioner for the past two years. He affirms that the petitioner's typical requirements for such individuals would include a computer science or a related degree and that he would refer candidates with engineering degrees for such a position. [REDACTED] also claims that having 20 years of expertise in the IT field, his experience with applicants indicates that they understand that an engineering degree is a related field of study.

The other letter, dated April 13, 2009, is from Client Resources, Inc. It is signed by its president, [REDACTED]. Based on her 13 years of experience, providing recruitment and placement services for IT professionals, she would consider a degree in engineering to be related to a degree in computer science. She also believes that her experience with applicants indicates that they have the same understanding. [REDACTED] further states that the petitioner's requirements would typically include a computer science or related degree and adds that she has successfully referred candidates to the petitioner that possess an engineering degree for a position that requires a computer science degree.

The record contains other letters submitted by the petitioner's senior executives such as [REDACTED], the petitioner's vice president of analysis and information systems (AIS). [REDACTED] states that he has been regularly involved in the hiring decisions made with regard to AIS and MIS workers. He explains that the petitioner has hired many candidates with engineering degrees into positions in the company's AIS/MIS departments. The process in computer analysis and programming is analogous to the process of engineering design in that both involve selecting, designing, modifying the existing component to form desired functions. He adds that over 20 percent of the programmer/analyst positions at the petitioner's business are held by employees with bachelor degrees in engineering including engineering degrees in electronics, mechanical, civil and aerospace engineering. Mr. [REDACTED] also states that if individuals with engineering degrees were not successfully performing, then the practice of accepting such degrees would have ceased long ago. As to the instant position, [REDACTED] further states that the analysis and programming of the petitioner's GIS system represents using maps, globes, geographic data sets, processing, data and work flow models, and metadata, which supports decisions critical to the transportation systems. The programmer/analyst position is involved in analyzing and measuring data related to the mechanical and logistical performance of the petitioner's trucks. Such analysis includes "complex mathematical rate analysis, thermodynamics analysis, drafting and mileage, mechanical maintenance forecasting, geopositioning, load structural analysis, engine wear analysis, schedule balancing, trailer location pooling, driver time utilization, and load consolidation programs." [REDACTED] states that the beneficiary's degree in mechanical engineering demonstrates his ability to analyze, design and modify abstract models of a system and in this case it not only involves programming code components but the analysis of mechanical and logistical factors as well.

As concluded by [REDACTED] the beneficiary's engineering degree program included some coursework in computer programming and design and additionally included coursework

relevant to the instant position given the nature of the GIS system used by the petitioner. These studies included engineering mechanics, thermodynamics, fluid mechanics, electronics, thermal engineering, gas dynamics, mechanics of machines, and turbo machines.

An additional letter, dated February 19, 2007, signed by ██████████ of the computer science department at Princeton University has been provided by the petitioner. It is a clarification of an earlier letter submitted by the petitioner and considered by the director. ██████████ determines that university training in mechanical engineering provides excellent preparation for working as a programmer. ██████████ states:

This is due not only to the prevalence of computing techniques in the field of engineering, but also to the fact that many engineering processes and activities themselves are analogous to those performed in the course of developing GIS software solutions-procedurally and technically, as well as theoretically/conceptually.

* * *

The intimate connections between the modern practice of engineering (including mechanical design, component modeling, production technologies, process simulation and mechanical analysis) and computing are made evident by the ubiquity of computer and software technologies in the engineering field. . .

This is due in part to the enormous data processing and analysis challenges inherent in mechanical engineering, but also to the fundamental similarities in the types of problems to be solved. In essence, software systems (whether for engineering or business applications), utilize numerical (algorithmic) methods of modeling or simulating processes, objects, characteristics, properties, or systems; analyzing interactions and predicting outcomes; and providing data input/output and complex user interaction capacity.

* * *

The subject position involves a focus in software design, development and maintenance for [the petitioner's] web-based systems, with a key GIS component, requiring object oriented programming (OOP) skills. . .

OOP first emerged as a concept in the 1960s and it is interesting to note that the concept arose from simulation software (Simula). As mentioned in my earlier letter, simulation software is used extensively in the mechanical engineering field for such purposes as mechanical component modeling, processing simulation, and applied mechanical analysis. Simulation software products (and associated/analogous algorithmic tools and mathematical models) have revolutionized the engineering landscape and are critical in enabling engineers to conduct component-level analyses of engineering dynamics and design procedures (through provision of software-generated walkthroughs and model-based depictions). The simulations are then utilized in enabling engineers to assess the quality of design prior to even the creation of a prototype. The use of simulation software is central (not merely peripheral) to the modern practice of the mechanical engineering discipline.

In the software field, the simulation-related method of OOP has become dominant largely due to the advent of C++ programming language (an extension of C) which is very typically taught in Computer Programming courses within ME programs. . .

Thus, there are strong logical relationships between OOP and the computer-based simulation techniques used in mechanical engineering. . . .

* * *

[T]he beneficiary's studies in computer programming, CAD/CAM, microprocessors and other computing courses would have provided a solid foundation in hands-on design and coding. At the same time, the prevalence of computing content in his coursework in process simulation, component modeling, instruments and control systems, production technology, and related areas, demonstrates the relevance of those studies to his work as a programmer analyst.

We do not find that current, former and potential employees' job applications and educational credentials submitted for consideration based on unrelated job descriptions are determinative of whether the instant beneficiary's mechanical engineering degree should be considered as a related field of study to computer science or MIS in a programmer analyst vacancy. However, we believe that [REDACTED] explanation as provided on appeal and letter submitted on appeal are persuasive, in this particular case, to conclude that the beneficiary's bachelor's degree in mechanical engineering should be deemed to be a degree in a related field of study for the proffered job of a programmer analyst with the duties as described on the ETA 750A.

It is additionally noted that DOL assigned the occupational code of 15-1021, computer programmers, to the proffered position as indicated on the ETA 750A. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/link/details/15-1021.00>³ the position "may require a background in the following science, technology, engineering, and mathematics (STEM) educational disciplines." Further, DOL's Occupation Outlook Handbook, (OOH) available online at <http://www.bls.gov/oco/ocos110.htm>, provides that employers who use computers for scientific or engineering applications usually prefer college graduates who have degree(s) in computer or information science, mathematics, engineering, or the physical sciences. Employers who use computers in business applications usually prefer to hire people who have had college courses in MIS and business. Additionally, as counsel submits on appeal, the OOH also provides that engineers apply the principles of physical science and mathematics in their work. One of the related occupations listed by OOH that also use scientific and mathematical principles include computer programmers.

Based on the above, the beneficiary has a four-year bachelor's degree in mechanical engineering, which, based on the facts presented in this case, may be considered as a degree in a related field of study to computer science or MIS as set forth in the ETA 750. Therefore the petition meets the terms of the labor certification for a preference visa classification under section 203(b)(3)(A)(ii) of the Act as a professional.

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.

³ (Accessed 4/27/09).