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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

B6

DATE: JUL 1 9 2012 OFFICE: TEXAS SERVICE CENTER FILE: [redacted]

IN RE: PETITIONER:
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:

[redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center (director), denied the employment-based immigrant visa petition. The petitioner appealed the decision to the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is an information processing manufacturer. It seeks to permanently employ the beneficiary in the United States as an advisory systems management professional. The petitioner requests classification of the beneficiary as a professional or skilled worker pursuant to section 203(b)(3)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A).[1]

The petition is accompanied by a Form ETA 750, Application for Alien Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is February 11, 2005. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not possess the minimum education required to perform the offered position by the priority date.

The record shows that the appeal is properly filed 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 AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 8 C.F.R. § 103.2(b)(l), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor

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[1] Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), grants preference classification to qualified immigrants who are capable 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), grants preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

[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 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).

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).

Where the job requirements in a labor certification are not otherwise unambiguously prescribed, e.g., by regulation, USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate about the beneficiary's qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to "examine the certified job offer *exactly* as it is completed by the prospective employer." *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS's interpretation of the job's requirements, as stated on the labor certification must involve "reading and applying *the plain language* of the [labor certification]." *Id.* at 834 (emphasis added). USCIS cannot and should not reasonably be expected to look beyond the plain language of the labor certification or otherwise attempt to divine the employer's intentions through some sort of reverse engineering of the labor certification.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

EDUCATION
College: X
College Degree Required: Bachelor's degree or foreign equivalent.
Major Field of Study: Computer Science, Management Information Systems, or Engineering.
TRAINING: None Required.
EXPERIENCE: Two (2) years in the job offered or in the related occupation of programmer analyst.
OTHER SPECIAL REQUIREMENTS: Employer will accept 2 years of university level study and 2 years of experience in the IT field as meeting the degree requirement.

The labor certification also states that the beneficiary had a diploma in Electrical Engineering from Central Polytechnic, Chennai, India, which was awarded in 1984, after three years of study. The petitioner stated that this diploma had been evaluated and was the equivalent of two years of university-level studies.

The record contains a copy of the following education documents for the beneficiary: a Microsoft certificate naming the beneficiary as a System Engineer; Tivoli professional certification; a diploma from the State Board of Technical Education and Training of Tamilnadu, India; and mark sheets issued by the government of Tamilnadu, Department of Technical Education, documenting six semesters of exams.

The record contains two credential evaluations. The first was performed by [redacted] of The Trustforte Corporation. [redacted] reviewed the beneficiary's Diploma in Electronics from Central Polytechnic in India and concludes that this diploma is equivalent to an Associate's of

Science degree in Electrical Engineering Technology from an accredited United States college. states that "various polytechnics offer accredited programs of post-secondary study on behalf of the Government of Tamil Nadu State." However, he does not state whether the beneficiary's school, Central Polytechnic is accredited. He goes on to state that admission to post-secondary programs is based upon completion of secondary school and competitive entrance exams. However, he does not state whether the beneficiary's program at Central Polytechnic had these same entrance requirements.

The second evaluation was prepared by also reviewed the beneficiary's diploma in Electronics from Central Polytechnic in India, and concludes that the beneficiary's studies are equivalent to an Associate's of Science degree in Electrical Engineering Technology. states "[a]fter completing intermediate high school studies, commenced studies in an Engineering Diploma..." goes on to say that admission to the beneficiary's program is based upon completion of intermediate secondary-level studies and competitive examinations. These statements concede that the beneficiary did not complete higher secondary school.

On February 2, 2012, the AAO issued a notice of intent to deny (NOID), informing the petitioner that the record did not contain evidence establishing that the beneficiary satisfied the required minimum educational criteria for the proffered job. In determining whether the beneficiary's education constitutes two years of university-level education in computer science, management information systems, or engineering we reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officer (AACRAO). AACRAO, according to its website, www.aacrao.org, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, http://aacraoedge.aacrao.org/register/index/php, EDGE is "a web-based resource for the evaluation of foreign educational credentials."

In the NOID, we noted that, according to the information in the record, and information provided by EDGE, the beneficiary did not appear to have completed two years of university-level education. We noted first that the beneficiary was born on May 6, 1966. The record contains a "secondary school leaving certificate" issued by the Board of Education of Tamil Nadu State, noting that he sat for examinations in March 1981. Using these two dates, the beneficiary would have been approximately 15 years old upon leaving his secondary school. According to EDGE, a leaving certificate is issued to a student upon completion of seven or eight years of primary education and two to three years of secondary education. EDGE stated that a person holding a leaving certificate *may be* placed in the eleventh grade in the United States. Thus, in the most favorable light, a leaving certificate holder would be determined to possess a tenth grade education.

We also consulted the educational ladder of India, also provided by EDGE. According to that ladder, following the tenth grade, students split into one of two tracks. The first, going to higher secondary school for the eleventh and twelfth grades in preparation for college, while the other goes to polytechnic schools for education. We note that colleges and universities in India typically require the completion of higher secondary school and examination prior to matriculation. Polytechnic education begins in the eleventh grade year, and typically consists of three years of instruction. According to EDGE, polytechnic education is not the equivalent of college or university-level instruction.

Based on the record and after consultation with EDGE, we noted in the NOID that the beneficiary attended polytechnic school directly upon completing secondary school, and did not receive university-level instruction. Indeed, from the record, it does not appear that the beneficiary ever attended higher secondary school, and he would therefore not be eligible for university or college-level admission.

The petitioner responded to the NOID on March 16, 2012, and conceded that the beneficiary did not possess two years of college-level study. However, the petitioner requested that the petition be adjudicated under the skilled worker criteria. Whether a petition is for a professional or a skilled worker, all minimum experience and educational criteria must be met at the priority date. Based on the plain language of the labor certification, the position requires, at a minimum, two years of university-level study. In conceding that the beneficiary does not meet the requirement of two years of university-level education, the petitioner concedes that the beneficiary does not meet the minimum requirements of the offered position set forth on the labor certification.

In response to the NOID, counsel asserts that the beneficiary qualifies for the offered position based on his five years of work experience from 1998 to 2003. Accepting such an assertion requires that the AAO ignore the requirement of two years of university-level study as clearly stated on the labor certification. No evidence was submitted to suggest that it was the petitioner's intent to accept a combination other than that set forth on the labor certification. Here, the beneficiary is lacking the required minimum educational criteria for the proffered job, and the petitioner concedes that point.

Although the clearly stated requirements of the position on the certified labor certification application allow for two years of university-level education and two years of experience to be substituted for a Bachelor's degree or foreign degree equivalent, the beneficiary does not possess the required education and does not qualify for the offered position. Additionally, the petitioner was informed in the NOID that the record contained experience letters from the beneficiary's past employer which did not comply with the regulation, and consequently could not be used to substantiate training or experience in the proffered job. The petitioner did not address this issue in its response to the NOID.

The AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date. Therefore, the beneficiary does not qualify for classification as a professional or skilled worker under section 203(b)(3)(A) of the Act.

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.