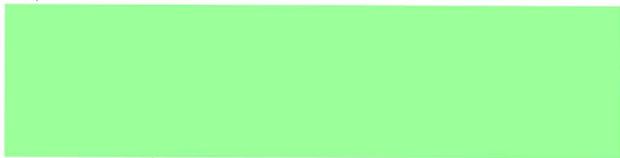




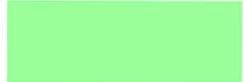
U.S. Citizenship
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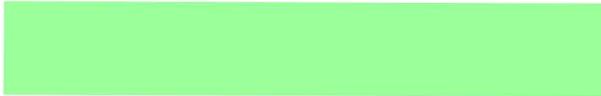


DATE: MAR 27 2012 OFFICE: NEBRASKA SERVICE CENTER

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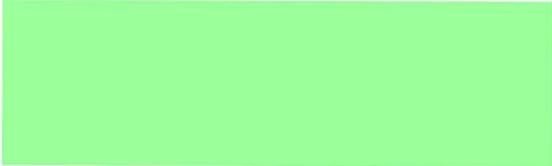


IN RE: Petitioner:
Beneficiary:



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:

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 law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must 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, Nebraska 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 describes itself as a uniform and career apparel company. It seeks to permanently employ the beneficiary in the United States as a senior system administrator. 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 an ETA Form 9089, Application for Permanent 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 January 29, 2007. *See* 8 C.F.R. § 204.5(d).

The director's decision denying the petition concludes that the beneficiary did not meet the minimum educational requirements of the labor certification because the beneficiary's degree is from an unaccredited educational institution.

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)(1), (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).

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).

In evaluating 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).

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:

- H.4. Education: bachelor’s degree in computer science or engineering.
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: 48 months experience as a manager or specialist required.
- H.14. Specific skills or other requirements: “B.S. or M.S. computer engineering. Extensive experience in VMS and MCC software together with Windows NT and Microsoft Exchange Background. *** Any suitable combination of education, training or experience is acceptable. ***”

The labor certification states that the beneficiary qualifies for the educational requirements of the offered position based on a bachelor’s degree from [REDACTED] India. The record contains a diploma stating that the beneficiary possesses an “Engineering Bachelor” from the school’s “Computer Engineering Branch” of its “College of Med-Tech Engineering.” The record also contains transcripts detailing the beneficiary’s courses and marks.

The petitioner submitted a credentials evaluation, dated November 28, 2001, from [REDACTED]. The evaluation describes the beneficiary’s diploma from [REDACTED].

[REDACTED] as a bachelor of engineering degree and concludes that it is “the equivalent of a Bachelor of Science Degree in Computer Engineering from an accredited institution of higher education in the United States.” The evaluation also states that “[REDACTED] is an accredited institution of higher learning in India.”

The director denied the petition on March 13, 2009. The decision concludes that the beneficiary’s bachelor’s degree could not be accepted as the foreign equivalent degree of a U.S. bachelor’s degree in computer science or engineering because [REDACTED] is not an accredited educational institution in India. The director decision states that, according to the Indian government’s University Grants Commission (UGC), the Association of Indian Universities (AIU), and the All Indian Council for Technical Education (AICTE), [REDACTED] is not listed as an accredited institution.

On appeal, with regard to the beneficiary’s qualifying academic credentials, counsel submitted the same educational evaluation from [REDACTED] previously provided, as well as the same documentation of beneficiary’s education previously submitted to the director.

According to the official website of the school, [REDACTED] has taken a “conscious decision of not seeking any approval/accreditation from any Government department or University” and that it “is not a university under UGC act and nor has it received any approval from UGC/AICTE of Council of Distance Learning for its courses.”³

USCIS 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); *see also Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert’s qualifications or the relevance, reliability, and probative value of the testimony).

Because the [REDACTED] evaluator incorrectly states that [REDACTED] is an accredited institution of higher learning in India, the evaluation is not considered credible here.

Counsel’s brief on appeal states:

We also wish to emphasize that [REDACTED] India is an educational trust and is a private university, therefore not subject to government control. The degree that was awarded to the beneficiary has been recognized by other universities within India for purposes of admission to postgraduate programs. Thus we believe this degree to be the equivalent to a US baccalaureate degree.

³ See [REDACTED] the school (last accessed March 13, 2012).

Counsel did not submit evidence to support the assertion that a private university in India is not subject to government accreditation. Additionally, counsel did not submit evidence that other universities within India recognize the beneficiary's degree. 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'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The petitioner has failed to establish that the beneficiary's bachelor's degree is from a recognized and/or accredited postsecondary institution in India. To ensure a basic level of quality, USCIS requires postsecondary degrees to be from recognized/accredited institutions under the applicable country's educational system. This provides assurance that the institution has been evaluated by one or more organizations that have developed procedures for determining whether or not the school is operating at a basic level of quality. USCIS will not recognize a program from an unaccredited educational institution for purposes of satisfying the educational requirements of a labor certification or the requested preference classification.

The beneficiary does not possess the foreign equivalent to a U.S. bachelor's degree. The petitioner does not claim or submit evidence establishing it could accept an individual with less than the foreign equivalent to a U.S. bachelor's degree under the terms of the labor certification. Therefore, the AAO affirms the director's decision that the petitioner failed to establish that the beneficiary met the minimum educational 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.

Beyond the decision of the director, the petitioner also failed to establish that it is a successor-in-interest to the entity that filed the labor certification. The petitioner, [REDACTED] with the Federal Employer Identification (FEIN) Number [REDACTED] is a different entity from the employer listed on the labor certification, [REDACTED] with FEIN [REDACTED]. A labor certification is only valid for the particular job opportunity stated on the application form. 20 C.F.R. § 656.30(c). If the petitioner is a different entity than the labor certification employer, then it must establish that it is a successor-in-interest to that entity. See *Matter of Dial Auto Repair Shop, Inc.*, 19 I&N Dec. 481 (Comm'r 1986).

A petitioner may establish a valid successor relationship for immigration purposes if it satisfies three conditions. First, the successor must fully describe and document the transaction transferring ownership of all, or a relevant part of, the predecessor. Second, the successor must demonstrate that the job opportunity is the same as originally offered on the labor certification. Third, the successor must prove by a preponderance of the evidence that it is eligible for the immigrant visa in all respects.

The evidence in the record does not satisfy all three conditions described above because it does not fully describe and document a transaction transferring ownership of the predecessor; it does not demonstrate

that the job opportunity will be the same as originally offered; and it does not demonstrate that the claimed successor is eligible for the immigrant visa in all respects, including whether it and the predecessor possessed the ability to pay the proffered wage for the relevant periods. Accordingly, the petition must also be denied because the petitioner has failed to establish that it is a successor-in-interest to the employer that filed the labor certification.

Additionally, beyond the decision of the director, the petitioner has also failed to establish its ability to pay the proffered wage. The petitioner must demonstrate its continuing ability to pay the proffered wage from the priority date and continuing until the beneficiary obtains lawful permanent residence. 8 C.F.R. § 204.5(g)(2). Evidence of ability to pay “shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.” *Id.*

The record before the director closed on February 10, 2009 with the receipt by the director of the petitioner’s submissions in response to the director’s request for evidence. As of that date, the petitioner’s 2008 federal income tax return was the most recent return available. However, the record does not contain federal tax returns, or audited financial statements for the petitioner. The record includes a Form 8-K dated November 12, 2008 which was submitted to the Securities and Exchange Commission by [REDACTED] FEIN [REDACTED]

The relationship between petitioner and [REDACTED] is not clear, however it is noted that USCIS (legacy INS) has long held that it may not “pierce the corporate veil” and look to the assets of the corporation’s owner to satisfy the corporation’s ability to pay the proffered wage. It is an elementary rule that a corporation is a separate and distinct legal entity from its owners and shareholders. *See Matter of M*, 8 I&N Dec. 24 (BIA 1958), *Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm’r 1980), and *Matter of Tessel*, 17 I&N Dec. 631 (Acting Assoc. Comm’r 1980). Consequently, assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation’s ability to pay the proffered wage.

The petitioner’s failure to provide complete annual reports, federal tax returns, or audited financial statements for each year from the priority date is sufficient cause to dismiss this appeal. While additional evidence may be submitted to establish the petitioner’s ability to pay the proffered wage, it may not be substituted for evidence required by regulation.

Accordingly, the petitioner has also failed to establish its continuing ability to pay the proffered wage to the beneficiary since the priority date.

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.