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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

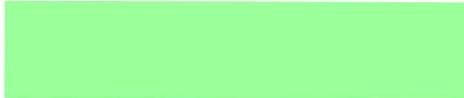


DATE: **AUG 20 2014** OFFICE: NEBRASKA SERVICE CENTER

FILE:



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 (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you.

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be sustained, and the petition approved.

The petitioner is a computer consulting company. It seeks to permanently employ the beneficiary in the United States as a senior software engineer and to classify him as a skilled worker or a professional pursuant to section 203(b)(3)(A)(i) or (ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i) or (ii). The immigrant petition, Form I-140, filed on August 12, 2007, is accompanied by an Application for Permanent Employment Certification, ETA Form 9089, certified by the U.S. Department of Labor (DOL) (labor certification).

On January 2, 2014, the Director denied the petition on the grounds that: (1) the labor certification did not support the petition with respect to the minimum educational credential(s) required for the proffered position; and (2) the petitioner failed to establish that the beneficiary had five years of qualifying experience, as required by the labor certification.

The petitioner filed a timely appeal with supporting documentation. We conduct appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

Section 203(b)(3)(A)(i) of the Act 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 provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.¹ 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. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petitioner must also establish its continuing ability to pay the proffered wage to the beneficiary from the priority date up to the present. See 8 C.F.R. § 204.5(g)(2). The priority date of the instant petition is July 20, 2007, which is the date the labor certification application was accepted for processing by the DOL. See 8 C.F.R. § 204.5(d).

Based on the entire record, including the evidence submitted on appeal, we determine that the petitioner has overcome the grounds for denial in the Director's decision. In particular, we find that the labor certification supports the petition with regard to the minimum educational requirements to qualify for the proffered position, and that the beneficiary more likely than not had at least five years of qualifying experience by the priority date, as required in the labor certification.

¹ The instant petition was filed on an old version of Form I-140 that allowed it to be considered for either a professional or a skilled worker. On January 6, 2010 the Form I-140 was revised to require petitioners to specify whether the petition was being filed for a professional or a skilled worker. Since the instant petition predates the adoption of the new Form I-140, both filing categories will be considered in this case.

In addition, we find that the petitioner has established that it more likely than not has had the continuing ability to pay the proffered wage from the priority date up to the present.

With regard to the educational requirement for the proffered position, the labor certification specifies that it may be satisfied by either (1) a bachelor's degree in engineering (any field), science, computer systems, mathematics, or management information systems) or a foreign educational equivalent, or (2) a combination of education, training and experience equivalent to a bachelor's degree in one of the foregoing fields.

Thus, under the terms of the labor certification a bachelor's degree is not the minimum level of education required. An individual could qualify for the position with an educational credential of less than a bachelor's degree. Therefore, the petition can only be approved under section 203(b)(3)(A)(i) of the Act for classification of the beneficiary as a skilled worker. It cannot be approved under section 203(b)(3)(A)(ii) of the Act for classification of the beneficiary as a professional.

We find that the beneficiary met the educational requirements of the labor certification as of the priority date. Specifically, he had foreign education which is equivalent to a U.S. bachelor's degree in mechanical engineering. The qualifying credential is the beneficiary's Certificate from the [REDACTED] dated June 3, 1999, certifying his election as an Associate on October 7, 1998, following his passage of Sections A and B of the Institution Examinations in the Mechanical Engineering Branch in Summer 1993 and Summer 1998. We find that this Certificate is comparable to a bachelor's degree in mechanical engineering from a U.S. college or university, based on the credential advice in the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO).² USCIS considers EDGE to be a reliable, peer-reviewed source of information about the U.S. equivalency of foreign educational credentials.

Since Associate membership in the [REDACTED] is a credential, and not an actual bachelor's degree, it does not make the beneficiary eligible for classification as a professional under the terms of the statute, which requires a "baccalaureate degree" (section 203(b)(3)(A)(ii) of the Act), and the regulations,

² According to its website, AACRAO is "a nonprofit, voluntary, professional association of more than 11,000 higher education admissions and registration professionals who represent more than 2,600 institutions and agencies in the United States and in over 40 countries." <http://www.aacrao.org/About-AACRAO.aspx>. Its mission "is to serve and advance higher education by providing leadership in academic and enrollment services." *Id.* EDGE is "a web-based resource for the evaluation of foreign educational credentials." <http://edge.aacrao.org/info.php>. Authors for EDGE are not merely expressing their personal opinions. Rather, they must work with a publication consultant and a Council Liaison with AACRAO's National Council on the Evaluation of Foreign Educational Credentials. See *An author's Guide to Creating AACRAO International Publications* available at http://www.aacrao.org/publications/guide_to_creating_international_publications.pdf. If placement recommendations are included, the Council Liaison works with the author to give feedback and the publication is subject to final review by the entire Council. *Id.*

which require “a United States baccalaureate degree or a foreign equivalent degree” (8 C.F.R. §§ 204.5(1)(2) and 204.5(1)(3)(ii)(C)). For this reason as well, therefore, the petition can only be approved under section 203(b)(3)(A)(i) of the Act for classification of the beneficiary as a skilled worker.

In accord with the foregoing analysis, the petition will be approved for classification of the beneficiary as a skilled worker.

The burden of proof in these proceedings rests solely with the petitioner. *See* 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 for classification of the beneficiary as a skilled worker under section 203(b)(3)(A)(i) of the Act.