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U.S. Department of Justice

Immigration and Naturalization Service

*OFFICE OF ADMINISTRATIVE APPEALS*
*425 Eye Street N.W.*
*ULLB, 3rd Floor*
*Washington, D.C. 20536*

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date:

FEB 11 2003

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3).

IN BEHALF OF PETITIONER: SELF-REPRESENTED

PUBLIC COPY

INSTRUCTIONS:
This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Director
Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was denied by the Director, Nebraska Service Center. The director's decision to deny the petition was affirmed by the Associate Commissioner for Examinations on appeal. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner specializes in generators. It seeks to employ the beneficiary permanently in the United States as a senior design engineer. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification as of the petition's priority date.

On motion, counsel requests oral argument. Oral argument, however, is limited to cases where cause is shown. It must be shown a case involves unique facts or issues of law which cannot be adequately addressed in writing. In this case, no cause for oral argument is shown. Counsel's request for oral argument is, consequently, denied.

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 or seasonal 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 who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is June 24, 1999.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of senior design engineer required a Bachelor of Science degree or its foreign equivalent in Mechanical Engineering and two years of experience in the job offered.

The director denied the petition noting that the beneficiary did not have the required Bachelor's degree.

On motion, counsel argues that:

> The Department of Labor regulations state that a U.S. worker may qualify by a combination of training, education and experience to meet the qualifications for the Labor Certifications and should not be disqualified on this basis. 20 C.F.R. 656.24(b)(@)(ii).

Despite counsel's arguments, the Service will not accept a claim of degree equivalency when a labor certification plainly and expressly requires a candidate with a specific degree. As noted previously, the labor certification, at block 14, specifically requires a Bachelor of Science degree or its foreign equivalent in Mechanical Engineering as the minimum level of education needed to perform the job duties.

A degree equivalency, whether based on work experience or a combination of lesser degrees, will not suffice to qualify a beneficiary as an immigrant under section 203(b)(3)(A)(i) or (ii) of the Act when the labor certification requires a specific degree. On the other hand, the nonimmigrant regulations at 8 CFR 214.2(h)(4)(iii)(D)(5) provide that progressively responsible work experience may be substituted for a year of education in a nonimmigrant H-1B petition. Neither the statute nor the regulations allow for the "equivalency" of a bachelor's degree for this immigrant classification. For this immigrant classification, a beneficiary must possess an actual baccalaureate degree when the labor certification requires a bachelor's degree as the required level of education.

The issue here is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary had a Bachelor of Science degree or equivalent foreign degree in Mechanical Engineering on June 24, 1999. Therefore, the petition may not be approved.

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 sustained that burden.

**ORDER:** The Associate Commissioner's decision of December 11, 2001 is affirmed. The petition is denied.