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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: EAC 01 127 52831 Office: VERMONT SERVICE CENTER Date: JAN 14 2003

IN RE: Petitioner:
Beneficiary: [redacted]

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:

[redacted]

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 preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a telecommunication networks and services company. It seeks to employ the beneficiary permanently as a software 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.

On appeal, counsel for the petitioner states that the beneficiary is a skilled worker as required by the regulations. In support of this claim, counsel for the petitioner submitted additional evidence for the record.

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 filing date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is November 10, 1999.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of software engineer required a Bachelor's degree in Computer Science or related field. The labor certification specifically requires that the major field of study be in "Computer Science, or related field." The labor certification does not state that any other level of education will satisfy the requirement.

In response to a request for additional evidence, the petitioner submitted copies of the beneficiary's diploma and transcripts.

The record contains an educational evaluation from the foundation for International Services, Inc., which states that the beneficiary

has the equivalent of three years of university-level credit from an accredited university in the United States.

On appeal, counsel submits an academic evaluation from Global Credential Evaluators, Inc., which states that the beneficiary has the "equivalent to three years of undergraduate course work in Sciences offered by a regionally accredited university in the U.S., Handbook on the Placement of Foreign Graduate Students 1990 Edition, National Association for Foreign Student Affairs, Washington, D.C. pages 163-165.

On appeal, counsel asserts that the beneficiary did meet the minimum qualifications of the labor certification, as the beneficiary had the "equivalent" of a bachelor's degree. Counsel states that the beneficiary completed all coursework necessary for a bachelor's degree in 1975.

Counsel's assertions are not persuasive. To determine whether a beneficiary is eligible for a third preference immigrant visa, the Service must ascertain whether the alien is in fact qualified for the certified job. In evaluating the beneficiary's qualifications, the Service must look to the job offer portion of the labor certification to determine the required qualifications for the position; the Service 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 v. Smith, 696 F.2d 1008 (D.C. Cir. 1983); K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006 (9th Cir. Cal. 1983); Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey, 661 F.2d 1 (1st Cir. 1981).

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 in Computer Science or related field as the minimum level of education needed to perform the job duties. The labor certification does not provide for a degree equivalent as the minimum level of education, regardless of whether the equivalency is based on work experience, training, or a combination of lesser degrees.

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's degree in Computer Science or related field on November 10, 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 appeal is dismissed.