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U.S. Department of Homeland Security

Bureau of Citizenship and Immigration Services

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
BCIS, AAO, 20 MASS, 3/F
Washington, D.C. 20536

[redacted]

File: [redacted] Office: NEBRASKA SERVICE CENTER Date: JUN 18 2003

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:
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 Bureau of Citizenship and Immigration Services (Bureau) 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.

Helen E. Crawford for
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a telecommunications company. It seeks to employ the beneficiary permanently as an IT customer service 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.

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 priority date is January 24, 2000.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of IT customer service engineer required a Bachelor's degree in Computer Science, and one year of experience in the job offered, or one year of experience in the related occupation of systems analyst, software engineer, or programmer analyst.

The director determined that the petitioner had not established that the beneficiary had the required Bachelor's degree and denied the petition.

On appeal, counsel argues that:

> The Immigrant Petition for the above individual was denied based upon the Educational Evaluation submitted, and a failure to meet minimum requirements as indicated on the Department of Labor's ETA 750. The ETA 750 specifically states the minimum requirement of a Bachelor's Degree with a major field of study in Computer Science. The denial states that the petitioner has

> failed to prove that the beneficiary meets the minimum education for the proffered position as defined on the ETA 750 Section 14. However, the attached education evaluation specifically states, "As per the attached reports, it is the determination of Educational Assessment & Evaluation, Inc. that a combination of the education, training and work experience of the above-captioned individual is equivalent to a Bachelor of Business Administration (BBA) degree in Business Information Systems (also known as Computer Information Systems or Management Information Systems) from a accredited university in the United States." Furthermore, an additional evaluation establishing that the aforementioned individual meets the minimum requirements will be submitted within 30 days.

The record contains an educational evaluation from Educational Assessment & Evaluation, Inc., which states that the beneficiary has received a degree in botany from the University of Pune in India. The evaluations further states that the beneficiary earned through various computer training centers the equivalent of two and one-half years (five semesters) of university level credit towards a baccalaureate degree in a computer-related field from an accredited university in the United States.

Counsel states that the petitioner has submitted documentation to establish that the beneficiary had a combination of education and experience to meet the requirements set forth in the Form ETA 750 prior to the filing date of the petition.

Counsel's argument is not persuasive. 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 on January 24, 2000. 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.