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U.S. Department of Homeland Security
Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
DHS, AAO, 20 Mass, 3/F
Street N.W.
Washington, D.C. 20536

[redacted]

FEB 06 2004

File: WAC 01 285 52016 Office: CALIFORNIA SERVICE CENTER Date:

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 Citizenship and Immigration Services (CIS) 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.

Robert P. Wiemann, Director
Administrative Appeals Office

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

The petitioner is a manufacturer of electronic machines and components. It seeks to employ the beneficiary permanently in the United States as a senior systems engineer. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the requirements for the proffered position as stated on the approved Form ETA 750 labor certification.

On appeal, counsel submits a brief.

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 nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The regulation at 8 CFR § 204.5(l)(3)(ii) states:

> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.
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> (C) *Professionals.* If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was

> awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary has the qualifications stated on the ETA 750 labor certification. The ETA 750 labor certification submitted in this case states that the proffered position requires that the beneficiary have a bachelor's degree in computer science, IT, or engineering "or equivalent" plus one year of experience as a consultant or software developer or in the job offered.

With the petition counsel submitted a copy of a diploma from Griffith University in Australia awarding the beneficiary a Bachelor of Informatics degree. Further, counsel submitted a copy of the petitioner's transcript from that University.

As to the beneficiary's work experience, the petitioner submitted a letter from Computer Systems Pty Limited, dated January 24, 1996, stating that the beneficiary worked for that company from October 11, 1993 to September 1995 as a technical support consultant and from September 1995 to the date of that letter as a network support manager.

Counsel also submitted the report of an educational evaluator. That educational evaluation states that the beneficiary's degree from Griffith University is the equivalent of three years of university-level credit in computer science from an accredited college or university in the United States. The evaluation further states that the beneficiary's education coupled with his work experience is the equivalent of a bachelor's degree in computer science from an accredited United States college or university.

Because the evidence submitted did not demonstrate that the beneficiary has a four-year degree in computer science, information technology, or engineering or an equivalent foreign degree, the Acting Director, California Service Center, on February 22, 2002, issued a Notice of Intent to Deny in this matter. The notice observed that, because the beneficiary's Australian degree is the equivalent of three years of study at a United States college or university, the beneficiary does not have a United States bachelor's degree or an equivalent foreign degree.

The petitioner was accorded 30 days to respond. The notice was remailed on July 11, 2002, according the petitioner another 30 days. No response was received. On September 10, 2002, the Director, California Service Center, denied the petition, finding that the evidence does not show that the beneficiary is qualified

for the proffered position pursuant to the terms of the Form ETA 750.

On appeal, counsel stated that the Notice of Intent to Deny was not received. The record indicates that the notice was sent to the petitioner's address of record, the same address to which the decision of denial was sent. The record contains no indication that the Notice of Intent to Deny was returned as undeliverable. In the interest of finality, however, this office will address counsel's substantive arguments.

Counsel argues that the educational evaluation indicates that the beneficiary possesses the equivalent of a United States bachelor's degree. Counsel notes that the Form ETA 750 requires a bachelor's degree "or equivalent."

Neither section 203(b)(3)(A)(i) of the Act, nor section 203(b)(3)(A)(ii) of the Act, nor the associated regulations allows the substitution of experience, in whole or in part, for education. Although substitution of experience for education is permitted pursuant to some non-immigrant visa categories, no such substitution suffices in the instant matter. The labor certification must be read, therefore, to require a United States bachelor's degree or an equivalent foreign degree. In the absence of evidence that the beneficiary possesses such a degree, the instant petition may not be approved. The educational evaluation makes clear that the petitioner's education, considered alone, is the equivalent of three years of instruction at a United States institution, and is not the equivalent of a United States bachelor's degree.

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.