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U.S. Department of Homeland Security

Citizenship and Immigration Services

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

[redacted]

File: [redacted] Office: CALIFORNIA SERVICE CENTER Date: FEB 26 2004

IN RE: Petitioner: [redacted]
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)

IN BEHALF OF PETITIONER:

[redacted]

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Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was initially approved by the Acting Director, California Service Center. On further review of the record when the beneficiary applied for adjustment of status to permanent resident, the acting director determined that the petition had been approved in error. Accordingly, the acting director properly served the petitioner with notice of intent to revoke the approval of the preference visa petition, and her reasons therefor, and ultimately revoked the approval of the petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner is a portable computer and P.C. component supplier. It seeks to employ the beneficiary permanently in the United States as a junior system developer. As required by statute, the petition was accompanied by certification from the Department of Labor.

The petition was approved on March 7, 2002. The acting director determined after further review that the beneficiary did not meet the requirements, i.e., a Bachelor of Science degree in either Computer Science or Electrical Engineering, as of the petition's priority date, April 9, 2001. The petition was revoked on April 26, 2002.

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 who are members of the professions.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

> 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 evidence that the alien is a member of the professions.

As required by 8 C.F.R. § 204.5(l)(3)(i), the petitioner submitted an individual labor certification, Form ETA-750, which was approved by the Department of Labor. At block 14, the labor certification states that the minimum qualifications required for the position are a Bachelor of Science degree in Computer Science or Electrical Engineering. The labor certification does not state that the combination of education and experience will satisfy the requirement.

For a petition to be approvable, a beneficiary must have all the training, education, and experience specified on the labor certification as of the date that the request for labor

certification was accepted for processing by the Department of Labor. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

On initial submission, the petition included an evaluation, dated March 3, 1997, from Josef Silny & Associates of Miami, Florida, which stated that the beneficiary had the equivalent of a U.S. Bachelor of Science degree in Electrical Engineering. The evaluator based his determination on one year of academic work (1977-78) and ten years of work experience (1986-96) by the beneficiary.

In her notice of intent to revoke, the acting director noted that to qualify under this immigrant classification, a beneficiary must have a United States baccalaureate degree or a foreign equivalent degree. One cannot qualify through a combination of education and work experience.

In response to the notice of intent to revoke, counsel for the petitioner furnished a new academic evaluation from Morningside Evaluations and Consulting Of New York, New York, and argued that the beneficiary has both the educational and functional equivalent of a U.S. bachelor's degree, and that the evaluation from Josef Silny & Associates had been done for H-1B purposes where a combination of education and work experience is acceptable.

The acting director declined to accept the new evidence, and revoked the petition accordingly.

On appeal, counsel submits a third academic evaluation, this one from Multinational Education & Information Services of Atlanta, Georgia, a letter from Peifa Jia, Professor of Computer Science and Technology at Tsinghua University which offers a reconstructed record of the beneficiary's academic studies and attests to his attendance at that institution from 1975 to 1979. Counsel also argues that CIS failed "to follow BIA and AAU decisions allowing using a combination of education and experience."

Counsel's argument regarding prior decisions is not persuasive. In one case, the decision cited was not a precedent, and all the cited decisions relate to prior law.

Nevertheless, the full record and the evaluations submitted in response to the acting director's notice and on appeal must be reviewed.

The record consistently shows that the beneficiary claimed four years of attendance at Tsinghua University from 1975 to 1979. This is borne out on the beneficiary's portion of the labor certification and on the beneficiary's diploma which shows up on more than one occasion in the record. Counsel's explanation that

the first evaluation was used when H-1B nonimmigrant classification was sought is plausible as both the statute and the regulations specifically allow for the use of work experience to establish equivalency of a bachelor's degree. Nevertheless, counsel should have been aware of the difference between qualifying for H-1B classification and qualifying as a professional under section 203(b)(3)(ii).

The evaluation from Morningside Evaluations and Consulting submitted in response to the acting director's notice of intent to revoke concludes that the beneficiary attained through his studies at Tsinghua University the equivalent of a U.S. Bachelor of Science Degree in Electronics Engineering.

The evaluation from Multinational Education & Information Services, submitted on appeal, concludes that the beneficiary's diploma in Automatic Control in the Department of Electronic Engineering is the equivalent of a bachelor's degree in Automatic Control from an accredited university in the United States.

The vast record in this case does not contain any derogatory information such as to persuade CIS to doubt the credibility of the academic evaluations submitted in response to the acting director's notice of intent to revoke and on appeal. Upon review, the petitioner has been able to present sufficient evidence to overcome the findings of the acting director in her decision to revoke the approval of the petition. The petitioner has established eligibility pursuant to section 203(b)(3)(A)(ii) of the Act, and the petition may 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 met that burden.

ORDER: The appeal is sustained.