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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]

FEB 26 2004

File: LIN 01 206 52744 Office: NEBRASKA 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 employment based immigrant visa petition was denied by the Director, Nebraska Service Center, which was subsequently affirmed by the Administrative Appeals Office (AAO). The matter is now back before the Administrative Appeals Office on a motion to reopen. The motion will be granted. The prior decision of the AAO, dated September 19, 2000 will affirmed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is a health care consulting firm. It seeks to employ the beneficiary as a director of technology and design. As required by statute, the petition was accompanied by an individual labor certification from the Department of Labor. The director denied the petition because he determined that the beneficiary's three years of foreign academic study is not the equivalent to a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought. The AAO affirmed that decision on a subsequent appeal.

On motion to reopen, the petitioner's counsel submits additional evidence and contends that the beneficiary's education and experience is sufficient to meet the requirements of the labor certification.

The regulation at 8 C.F.R. § 103.5(a)(2) provides that a motion to reopen must present the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. As the petitioner, through counsel, has submitted a new credential evaluation to the record of proceeding, the AAO will consider the merits of his motion to reopen.

In pertinent part, Section 203(b)(3)(A)(i) of 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, 8 U.S.C. § 1153(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. § 204.5(d). In this case, that date is January 11, 1999.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, the CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification Form ETA-750A, items 14 and 15 set forth the minimum education, training, and experience that an applicant must have for the position of a director of technology and design. In the instant case, only item 14 contains any information. It shows the following requirements:

 [redacted]

| | | |
|---|---|---|
| 14. | Education | |
| | College | 4 |
| | College Degree Required | Bachelors Degree |
| | Major Field of Study | Graphic Design |

As proof of the beneficiary's bachelor's degree required by the labor certification, the petitioner initially submitted an unsigned credential evaluation report from "World Education Services, Inc." It indicates that the beneficiary's formal academic education at the Universidad Iberoamericana, Mexico, during the years 1990 through 1994, resulted in the equivalency of three years of undergraduate study in the United States.

The director denied the petition, concluding that the beneficiary's three years of undergraduate study is not an acceptable equivalency for a four-year baccalaureate degree in the United States required by the labor certification. A subsequent appeal to the AAO affirmed the director's decision.

On motion to reopen, counsel contends that another credential evaluation dated October 24, 2001 had been submitted to CIS or AAO but had not been considered when the decision was issued. A copy of this credential evaluation by "Morningside Evaluations and Consulting" accompanies the motion. It also states that the beneficiary's college coursework was "substantially similar to those required toward the completion of three years of academic studies leading to a Bachelor's Degree from an accredited institution of higher education in the United States." Following a consideration of the beneficiary's professional experience in graphic design, it ultimately concluded that a combination of the beneficiary's academic studies and work experience can be considered to be the equivalent of a Bachelor of Fine Arts degree in the United States.

In evaluating a beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific college degree. It is noted that the regulation at 8 C.F.R. § 204.5(l)(2) specifically defines a professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent *degree* and is a member of the professions." (Emphasis added). In this case, the labor certification plainly requires that the job candidate have four years of college and a bachelor's degree with a major in graphic design.

A combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a United States baccalaureate degree, is not a foreign equivalent bachelor's degree. If supported by a proper credential evaluation, a four-year baccalaureate degree from Mexico could reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, neither evaluation provides that the beneficiary's attendance at the Universidad Iberoamericana resulted in the equivalent of a United States bachelor's degree. In order to conclude that the beneficiary holds the requisite bachelor's degree, the Morningside evaluation erroneously combined the beneficiary's three years of study and subsequent work experience. We note

that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In *Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245. Based on similar reasoning, it cannot be concluded that the beneficiary's three years of academic study at the Universidad Iberoamericana satisfied the terms of the labor certification requiring four years of college and a baccalaureate degree.

Based on the evidence submitted, the AAO concurs with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as required by the terms of the labor certification.

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 motion to reopen is granted. The prior decision of the AAO, dated September 19, 2002, is affirmed. The petition is denied.