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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: VERMONT SERVICE CENTER Date: JAN 09 2004

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]

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 (AAO) on appeal. The decision of the director will be withdrawn, and the case will remanded for processing in accordance with section 106(c) of the American Competitiveness in the Twenty-First Century Act of 2000 (AC21) and outstanding Headquarters policy memoranda.

The petitioner is a software solutions and consulting firm which seeks to employ the beneficiary permanently in the United States as a programmer analyst. The petitioner's predecessor in interest, Softline., Inc., had originally petitioned for the beneficiary. That petition was approved on December 28, 1999, pursuant to section 203(b)(3) of the Act. The beneficiary applied for adjustment of status to permanent residence on March 15, 2000, when a visa number became available.

On October 13, 2000, the director requested that the successor in interest, Qwest Cyber.Solutions LLC, file a new petition in behalf of the beneficiary. That petition was filed on January 16, 2001.

On July 27, 2001, the director revoked the earlier petition because the petitioner's business had been terminated. On the same day, the director denied the instant petition, finding that the beneficiary did not meet the educational requirements of the labor certification because he did not hold "a Bachelor's Degree or an equivalent foreign degree in Computer Science, Information Science, or Electronic Engineering." As of July 27, 2001, the beneficiary's application for adjustment of status had been pending for seventeen months.

On appeal, counsel cites the provisions of AC21, noting that whether or not the current petitioner is a successor in interest is no longer relevant. Counsel also maintains that the beneficiary's foreign academic credentials are the equivalent of a United States bachelor's degree. Counsel states that the academic evaluation submitted with the instant petition was originally submitted with a petition for nonimmigrant classification, and it does not speak to all the beneficiary's academic qualifications. Counsel maintains, however, that the academic evaluation submitted with the original I-140 petition does establish that the beneficiary has equivalent credentials to a United States bachelor's degree. Furthermore, counsel submits a more recent evaluation to support her contention.

Section 204(j) of the Act, as amended by section 106(c) of AC21, states that:

> A petition under subsection (a)(1)(D) for an individual whose application for adjustment of status pursuant to

> section 245 has been filed and remained unadjudicated for 180 days or more shall remain valid with respect to a new job if the individual changes jobs or employers if the new job is in the same or a similar occupational classification as the job for which the petition was filed.

Among the petitions referred to in subsection (a)(1)(D) is a petition under section 203(b)(3).

A policy memorandum from the Executive Associate Commissioner, Office of Field Operations, dated June 19, 2001, and a memorandum from the Acting Associate Director for Operations, CIS, dated August 4, 2003, provide instructions to field offices on how to handle AC21 cases. A petition from the new employer is not required; rather, a letter of employment from the new employer verifying that the job offer exists and containing the new job title, job description, and salary required. In such a case the underlying I-140 remains valid.

Under these procedures, in a case such as this, the director would not have required a new petition. If, in reviewing the approved I-140 petition in conjunction with the letter from the new employer, he determined that the beneficiary did not really meet the requirements of the labor certification, then the appropriate course would be to issue a notice of intent to revoke, and follow procedures appropriate to section 205 of the Act and 8 C.F.R. § 205.

Based on her approval of the petition filed by Softline, Inc., the director was apparently satisfied at that time that the beneficiary met the educational requirements of the labor certification. The evaluation submitted with the petition indicated that the two-year computer degree course the beneficiary completed at the Szamalk Educational and Consulting Center, Hungary, in 1991, and the three-year Computer Science certificate course he completed at the same institution in 1994 equate to a Bachelor of Science in Computer Science from an accredited university in the United States.

With the second petition, the petitioner submitted another evaluation, dated December 8, 2000, which states that based on the years and number of hours of coursework taken, the nature of the courses, the grades attained, and "approximately six years of professional training and work experience," the beneficiary has the equivalent of a United States Bachelor of Science degree in

Computer Science. As noted above, counsel states that this evaluation had originally been used in support of a nonimmigrant petition where a combination of education and work experience is acceptable.

On appeal, counsel submits another evaluation from the same person who did the December 8, 2000, evaluation. This evaluation, dated August 17, 2001, is under the letterhead of a different organization. In this document, the evaluator concludes that the certificate received in 1994 coupled with completion of the diploma course in 1991 equate to the attainment of a Bachelor of Science degree in Computer Science from an accredited institution of higher education in the United States.

The variations found in the three evaluations do not enforce counsel's arguments regarding the beneficiary's qualifications. The labor certification requires that the beneficiary possess a "BS or foreign degree equiv." The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states that the alien professional should hold a "United States baccalaureate degree or a foreign equivalent degree." The petitioner's requirements are unclear, as are the evaluations.

It is also noted that the employer requires that the beneficiary's college education have amounted to four years. Examination of the record shows that from May 1990 until October 94 the beneficiary was employed for forty hours a week in Hungary by GE Lighting Europe (previously known as Tungsram RT). This information also clouds the extent and nature of his education.

In view of the foregoing, the previous decisions of the director are withdrawn. Approval of the original petition is reinstated. The director is to reexamine the record. If the director is convinced that the decision approving the original petition was in error in that the beneficiary, in fact, does not meet the educational requirements of the labor certification, then he should serve the petitioner with a notice of intent to revoke, allowing the petitioner sufficient time to respond to the proposed grounds of revocation. If he decides that the petition should not be revoked, then he should proceed with processing in accordance with the provisions of AC21 and outstanding CIS instructions.

ORDER: The director's decisions are withdrawn. The case is remanded to the director for further action in accordance with the foregoing.