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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: LIN 02 198 50444 Office: Nebraska Service Center Date: MAR 16 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)

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, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer services and integrator products firm. It seeks to employ the beneficiary permanently in the United States as a systems engineer. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanies the petition. The director determined that the beneficiary did not meet the qualifications of the position as stated in the labor certification as of the priority date.

On appeal, counsel states the petitioner demonstrated that the beneficiary met the minimum requirements for the job.

With the petition counsel submitted an ETA 750 indicating the proffered position required a bachelor's degree or its equivalent in computer science and two years experience. Counsel also submitted a copy of a certificate from the Board of Technical Examinations of Maharashtra State granting the beneficiary a diploma in computer technology. An evaluation report from the Foundation for International Studies, Inc. submitted by counsel indicates the evaluator reviewed six certificates from Maharashtra State listing the courses the beneficiary passed to obtain this diploma. He stated the beneficiary's education was the equivalent of an associate's degree in computer technology from an accredited community college. The evaluator evaluated the beneficiary's work experience and determined that combined with her educational achievements, she had obtained the equivalent of a bachelor's degree in computer science from an accredited U.S. college or university.

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.

Furthermore, 8 C.F.R. 204.5(l)(3)(ii) states, in pertinent part:

> (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.

To be eligible for approval, a beneficiary must have all of 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 DOL. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petitioner's priority date in this instance is October 17, 2001.

In a request for evidence (RFE) dated August 12, 2002, the director requested evidence that the beneficiary met the educational requirements of the labor certificate before the priority date. In response, counsel submitted copies of training certificates the beneficiary had earned, transcripts of the courses the beneficiary had taken at Maharashtra State, and a statement from petitioner that it will accept a combination of education and experience in fulfillment the job requirements. Counsel also resubmitted the evaluation report prepared by the Foundation for International Services, Inc.

The director denied the petition, determining that the petitioner had not established that the beneficiary met the education requirements of the labor certification.

On appeal, counsel argues that the term "equivalent" connotes the "work equivalency" of a bachelor's degree, and that as the ETA 750 was certified by the DOL, the beneficiary met all of the requirements set by the petitioner. Although counsel requested 30 days in which to submit a supporting brief or additional evidence, no further information had been received by the AAO as of the date of this decision.

The petitioner in its request for labor certification described the education and experience requirements it sought as a Bachelor's Degree or its equivalent with a major field of study in computer science. In this context, the petitioner indicated it sought the educational equivalency of a bachelor's degree. It did not specify that experience or a combination of experience and education could also satisfy the job requirements. According to the petitioner's authority, the beneficiary has the equivalent of a two-year associate degree, and does not meet the minimum educational requirements specified by the petitioner in the labor certification.

The role of DOL in the immigration process is to certify that there are not enough qualified and available U.S. workers at the time of the application and that employment of the alien will not adversely affect similarly employed U.S. workers. Section 212(a)(5)(A) of the Act, 8 U.S.C. § 1182. *See also* 20 C.F.R. §

656.24. DOL's determination, if any, regarding the alien's qualifications for the job specified on the labor certification is merely advisory, and CIS is not bound by any such determination. *See Matter of Wing's Tea House,* 16 I&N Dec. at 160.

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director in his decision to deny the petition. The petitioner has not established eligibility pursuant to section 203 (b)(3)(A)(i) of the Act and 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 met that burden.

ORDER: The appeal is dismissed.