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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 02 114 55191 Office: NEBRASKA SERVICE CENTER Date: MAR 29 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 employment based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be sustained.

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 manufactures and sells aluminum products. It seeks to employ the beneficiary as an engineering services manager. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary's educational credentials did not conform to the requirements of the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel contends that the beneficiary's education and experience are sufficient to meet the requirements of the labor certification.

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) 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 regulation at 8 C.F.R. § 204.5 (d) defines the priority date as the date the request for labor certification was accepted for processing by any office within the employment service system of the Department of Labor. Here, the petition's priority date is January 19, 1999.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, 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 engineering services manager. In this case, the educational requirements appearing in item 14 state that the applicant must have a bachelor's degree in materials science or metallurgical engineering. An asterisk appears beside the bachelor's requirement, signifying that further information is found in item 15. In item 15, it shows: "Or equivalent based on a credentials evaluation."

As proof of the beneficiary's educational qualifications, the petitioner submitted a copy of a 1988 "BTEC Higher National Certificate" in metals technology awarded by the Gwent College of Higher Education, United Kingdom. A grade transcript indicating that the beneficiary received credit for thirteen courses accompanies the certificate.

A December 15, 1998, academic evaluation from "Multinational Education & Information Services, Inc.," was also submitted in support of the petition. This evaluation determined that a combination of the beneficiary's education and over nine years of work experience is the equivalent of a U.S. bachelor's degree in material sciences.

The director denied the petition, concluding that the beneficiary's studies and experience together cannot be accepted as the equivalent of a U.S. bachelor's degree.

On appeal, counsel contends that the beneficiary meets the qualifications as set forth on the approved labor certification because he has met the alternative to a degree requirement. His qualifications were deemed to be the equivalent based on a credentials evaluation.

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. In this instance, however, item 15 amends the degree requirement described in item 14 and adds an alternative that allows the employer to specifically consider the conclusions of a credentials evaluation. CIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Matter of Silver Dragon Chinese Restaurant,* 19 I&N Dec. 401, 406 (Comm. 1986). As noted by counsel, the employer's statement contained in the record affirms that the position's requirements were described in such a way so as to increase the pool of possible applicants.

Based on the evidence submitted, we concur with counsel that the petitioner has established that the beneficiary possesses the necessary credentials 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 sustained that burden.

ORDER: The appeal is sustained.