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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services



B5

DATE: FEB 10 2012 OFFICE: NEBRASKA SERVICE CENTER

FILE:



IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). The petitioner filed a motion to reopen and reconsider, which was also denied by the Director. The case is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a software development and information technology consulting company. It seeks to permanently employ the beneficiary as a Senior Software Engineer, Applications and requests that he be classified as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

Section 203(b)(2) of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. *See* 8 C.F.R. § 204.5(k)(2). The regulation further states: “A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master’s degree....” *Id.*

On February 14, 2008, the Director denied the petition on the ground that the beneficiary’s educational credentials from India – specifically, a three-year Bachelor of Science degree in Mathematics from the University of Madras and a Post-Graduate Diploma (PGD) in Computer Applications from Madurai Kamaraj University – were not equivalent to a bachelor’s degree from a U.S. college or university, as required by the labor certification, ETA Form 9089, approved by the Department of Labor (DOL). Of particular importance, the Director found that the documentation of record failed to establish the duration of the PGD program, that it built upon the beneficiary’s bachelor’s degree, or that a three-year bachelor’s degree was a prerequisite to enroll in the PGD program. The Director concluded that the beneficiary’s “coursework in multiple institutions” was not equivalent to a bachelor’s degree in the United States.

The motion to reopen and reconsider was denied by the Director on the ground that the evaluation of the beneficiary’s academic credentials submitted by the petitioner – from [REDACTED] of the Medgar Evers College of the City University of New York, School of Business – did not provide any new factual evidence or legal basis to change the initial decision. The petitioner then filed the instant appeal.

In support of the appeal the petitioner submitted a brief from its general counsel and two new evaluations of the beneficiary’s educational credentials from International Credentials Evaluation and Translations Services (ICETS) and the American Evaluation and Translation Service (AETS). The petitioner also re-submitted the evaluation from [REDACTED]. All three of the evaluations assert that the beneficiary’s three-year Bachelor of Science in Mathematics and one-year PGD in Computer Applications¹ are equivalent, in combination, to a Bachelor of Science degree in the

¹ The Director stated in his initial decision that it appeared the beneficiary completed his PGD coursework in one semester. The petitioner asserts that the PGD was a one year program, however,

United States. An earlier submitted evaluation from The Trustforte Corporation (Trustforte) asserts that the PGD (since it followed a three-year bachelor's degree) is a stand-alone equivalent to a U.S. Bachelor of Science degree. According to ICETS, Robotham, and Trustforte, the equivalent U.S. degree is a B.S. in Computer Science. According to AETS, the equivalent U.S. degree is a B.S. in Computer Information Systems. The Robotham and AETS evaluations both claim that a three-year bachelor's degree from an Indian university is a prerequisite for admission to the one-year PGD program at Madurai Kamaraj University. However, neither of these evaluators offers any proof of this claim such as a letter or other documentation from an authoritative source at Madurai Kamaraj University. As for the other two evaluations from ICETS and Trustforte, neither of them claims that a three-year bachelor's degree is a prerequisite for admission to the one-year PGD program at Madurai Kamaraj University.

U.S. Citizenship and Immigration Services (USCIS) uses evaluations of a person's foreign education by credentials evaluation organizations as advisory opinions only. Where evaluations are not in accord with previous equivalencies or are questionable in any other way, they may be discounted or given less weight. *See Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm'r 1988). In view of the inconsistency among the ICETS, Robotham, AETS, and Trustforte evaluations regarding the academic prerequisite for admission to Madurai Kamaraj University's PGD program, as well as their lack of documentary support, the AAO determines that the evaluations have little probative value in this proceeding.

On November 5, 2010, the AAO sent a Request for Evidence (RFE) to the petitioner. The AAO referred to the Electronic Database for Global Education (EDGE), created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), as an additional resource for determining the U.S. equivalency of the beneficiary's academic credentials from India. The petitioner was advised that, according to EDGE, a Bachelor of Science degree in India is awarded upon completion of two to three years of tertiary study beyond the Higher Secondary Certificate (equivalent to a U.S. high school degree) and is comparable to two to three years of university study in the United States. With regard to Post Graduate Diplomas in India, the petitioner was advised that, according to EDGE, a PGD program is comparable to one year of university study in the United States. While EDGE states generally that a PGD following a three-year bachelor's degree is comparable to a bachelor's degree in the United States, it also indicates that a PGD is not comparable to a U.S. bachelor's degree if the entrance requirement for the PGD program is a Higher Secondary Certificate rather than a three-year bachelor's degree. The AAO also cited EDGE's "Credential Author Notes" which indicate that PGDs "should be issued by an accredited university or an institution approved by the All-India Council for Technical Education (AICTE)." To address the issues highlighted by the EDGE analysis, the AAO requested that the petitioner submit documentary evidence that the PGD program in computer applications at Madurai Kamaraj University is an AICTE-approved post-bachelor level program and that its entrance requirement is a

and the beneficiary's transcript, while unclear about the duration of the listed courses, describes his credential as a "P.G. Diploma in Computer Applications (Non-Semester)."

three-year bachelor's degree. (The AAO also requested documentary evidence of the beneficiary's Bachelor of Science degree from the University of Madras, which was already in the record.)

In addition to the foregoing requests concerning the beneficiary's academic credentials, the AAO requested that evidence be submitted to establish the petitioner's continuing ability to pay the proffered wage – \$88,130 per year – from the priority date of February 25, 2006 up to the present, in accordance with 8 C.F.R. § 204.5(g). The petitioner was requested to submit copies of its annual reports, federal tax returns, or audited financial statements for the years 2006-2009, as well as the beneficiary's W-2 forms (wage and tax statements) for the years 2007-2009. The AAO advised the petitioner of USCIS records showing the petitioner had filed numerous other Form I-140 immigrant visa petitions for other beneficiaries – 140 in 2006, 84 in 2007, 7 in 2008, 8 in 2009, and 15 in 2010 – and that it must demonstrate its ability to pay the proffered wages to all these beneficiaries as well. The petitioner was requested to submit detailed information about the priority dates, proffered wages, current status, and the dates of lawful permanent residence for any or all of these beneficiaries, as well as documentary evidence of the petitioner's ability to pay the proffered wages of all these beneficiaries during the years 2006-2009.

Finally, the AAO advised the petitioner of evidence in the record showing that the beneficiary had accepted a job offer from another company in Florida, which filed a labor certification application in January 2009 (certified by the DOL in October 2009) and a Form I-140 immigrant visa petition that was approved by the Texas Service Center in December 2009. In view of this development, the AAO requested the petitioner to submit evidence that the beneficiary still intends to fill the proffered position and that the job offer is still *bona fide*.

The petitioner was afforded 45 days to respond to the RFE with additional evidence, and was advised that if no response was received the appeal would be dismissed without further discussion.

The petitioner did not respond within the 45-day period specified in the RFE (or any time since then). If a petitioner fails to respond to a request for evidence by the required date, the petition may be summarily denied as abandoned, denied based on the record, or denied for both reasons. *See* 8 C.F.R. § 103.2(b)(13)(i). The AAO alerted the petitioner that failure to respond to the RFE would result in dismissal since the appeal could not be substantively adjudicated without the documentation requested. As provided in 8 C.F.R. § 103.2(b)(14), the failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition.

In this case, the petitioner has not responded to the RFE of November 5, 2010, despite the AAO's warning that failure to respond would result in dismissal of the appeal without further discussion. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.