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U.S. Citizenship  
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Services

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FILE:



Office: NEBRASKA SERVICE CENTER

Date: JUL 21 2008

LIN-07-027-53899

IN RE:

Petitioner:

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:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.

Robert P. Wiemann, Chief  
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 an energy company. It seeks to employ the beneficiary permanently in the United States as a database administrator. As required by statute, a Form ETA 750,<sup>1</sup> Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. Upon reviewing the petition, the director determined that the beneficiary did not satisfy the minimum level of education stated on the labor certification. Specifically, the director determined that the beneficiary did not possess a four-year bachelor's degree as required on the Form ETA 750. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's January 29, 2008 decision, the primary issue in the current petition is whether the beneficiary possessed the requisite bachelor's degree for the proffered position.

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 nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) of the Act also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

On appeal counsel asserts that the petition was denied because of a discrepancy between two credentials evaluations of the beneficiary's foreign education and that the newly submitted evaluation report dated February 20, 2008 from [REDACTED] of The Trustforte Corporation ([REDACTED] February 20, 2008 evaluation) confirms that the beneficiary's foreign education alone is equivalent to a U.S. bachelor's degree.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. 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). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

In the instant case, 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 information systems technical consultant. In the instant case, item 14 describes the requirements of the proffered position as follows:

- |     |              |   |
|-----|--------------|---|
| 14. | Education    |   |
|     | Grade School | X |

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<sup>1</sup> After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089

High School	X
College	4 [years]
College Degree Required	Bachelor's [degree]
Major Field of Study	Comp[uter]Sci[ence], E[lectrical]E[ngineering], Math, or Physics

The applicant must also have two years of experience in the job offered or in the related occupation of database analyst or software engineer. The duties of the proffered position are delineated at Item 13 of the Form ETA 750A. Item 15 of Form ETA 750A states the following as other special requirements:

Experience in #14 includes:

Bachelor's Degree in computer science, electrical engineering, mathematics or physics; two years of experience designing, developing, implementing and supporting utility meter Oracle RDBMS billing software, using MF-Cobol Workbench, Crystal Reports, VBA, TSO, PL/SQL, NT Command Scripting, and Shell Scripts on AIX, SQL\*Plus. One year of experience implementing, supporting and providing performance analysis and tuning for Oracle RDBMS to enable utility metering and time of use (TOU) reads using ASP with VB Scripting, Spotlight and Toad.

Experience may be gained concurrently.

The AAO maintains plenary power to review each appeal on a de novo basis. 5 U.S.C. § 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also, Janka v. U.S. Dept. of Transp.*, NTSB, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's de novo authority has been long recognized by the federal courts. *See, e.g. Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>2</sup> On appeal, counsel submits the Silberzweig February 20, 2008 evaluation. Other relevant evidence in the record includes the beneficiary's bachelor of science degree in mathematics, physics & statistics and transcripts from Andhra University in India, International Diploma in Computer Programming and Application and transcripts from NCC The National Centre for Information Technology, United Kingdom, certificates of completion of computer related courses from the Bureau of Data Processing Systems in Kathoke Bhavan, Dadar, Bombay, Oracle, Orbit Information Technologies in Hyderabad, RAM Informatics Limited in Hyderabad, Information Systems Pvt. Ltd., and evaluation reports from Multinational Education & Information Services, Inc. (Multinational April 1, 1998 evaluation) and Educational Assessment, Inc. (EAI November 7, 2007 evaluation). The record does not contain any further evidence concerning the beneficiary's educational qualifications.

The original Form ETA 750 was accepted on April 24, 2003 and certified on May 12, 2006. The ETA 750 in the instant case was filed and certified for the position of database administrator. DOL assigned the occupational code of 039.162-010, database administrator, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at <http://online.onetcenter.org/crosswalk/DOT?s=039.162-010&g=Go> (accessed May 27, 2008) and its

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<sup>2</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

extensive description of the position and requirements for the position same with database administrator position, the position falls within Job Zone Four requiring “considerable preparation” for the occupation type closest to programmer analyst position. According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means “[m]ost of these occupations require a four-year bachelor’s degree, but some do not.” See <http://online.onetcenter.org/link/summary/15-1061.00#JobZone> (accessed May 27, 2008). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

*See id.*

Therefore, a database administrator position could be properly analyzed as a professional or as a skilled worker since the normal occupational requirements do not always require a bachelor’s degree but a minimum of two to four years of work-related experience.<sup>3</sup> In this case, although the petitioner checked box e in Part 2 of the I-140 form, which is for either a professional or a skilled worker, both the counsel’s submission letter dated October 18, 2006 and the petitioner’s supporting letter dated October 12, 2006 indicated that the petition was filed to classify the beneficiary under EB-3 Professional category. The petitioner’s supporting letter also specified that: “In granting labor certification for this position, DOL determined it to have a DOT code of 039.162-010, ‘Database Administrator,’ which is a professional occupation with an SVP of 8.” Further, the Form ETA 750 does not indicate that the employer, now the petitioner, would accept any alternate requirements in lieu of the bachelor’s degree requirement, which shows the petitioner intended to classify the instant beneficiary under the third preference skilled worker category. The Form ETA 750 does not allow an equivalent to the bachelor’s degree. Furthermore, CIS records show that the petitioner has been filing and got approvals of the H-1B nonimmigrant petitions for the beneficiary in the proffered position as a professional position since 2002.<sup>4</sup> In addition, the director analyzed and denied the instant petition under the professional category. On appeal, counsel does not provide any assertions against the director’s classification. Therefore, the AAO finds that the director properly analyzed this petition under the professional category. Accordingly, the AAO will examine the instant appeal and the petition under the professional category and determine whether or not the petitioner establish the beneficiary’s qualifications for the professional proffered position.

For the professional category, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and

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<sup>3</sup> A professional occupation is statutorily defined at Section 101(a)(32) of the Act as including but not limited to “architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries.” It is noted that database administrator positions are not included in this section.

<sup>4</sup> LIN-02-218-54570, LIN-05-158-50206, WAC-06-170-53425, WAC-07-236-54160 and WAC-08-107-50559.

by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

(Emphasis added.)

The above regulations use a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

For classification as a member of the professions, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) requires the submission of “an official *college or university* record showing the date the baccalaureate degree was awarded and the area of concentration of study.” (Emphasis added.) Moreover, it is significant that both the statute, section 203(b)(3)(A)(ii) of the Act, and relevant regulations use the word “degree” in relation to professionals. A statute should be construed under the assumption that Congress intended it to have purpose and meaningful effect. *Mountain States Tel. & Tel. v. Pueblo of Santa Ana*, 472 U.S. 237, 249 (1985); *Sutton v. United States*, 819 F.2d. 1289, 1295 (5<sup>th</sup> Cir. 1987). It can be presumed that Congress’ narrow requirement in of a “degree” for members of the professions is deliberate. Significantly, in another context, Congress has broadly referenced “the possession of a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning.” Section 203(b)(2)(C) (relating to aliens of exceptional ability). Thus, the requirement at section 203(b)(3)(A)(ii) that an eligible alien both have a baccalaureate “degree” and be a member of the professions reveals that member of the profession must have a *degree* and that a diploma or certificate from an institution of learning other than a college or university is a potentially similar but distinct type of credential.

The beneficiary possesses a three-year bachelor of science degree in mathematics, physics and statistics from Andhra University in India. A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary’s three-year bachelor of science degree from Andhra University in India cannot be considered a foreign equivalent degree. The record contains a copy of the beneficiary’s International Diploma in Computer Programming and Application from NCC. The diploma was issued for completion of course by Computer Education by Apply Indust’s Ltd in Hyderabad, India. However, the record does not demonstrate this diploma is a single academic degree that is a foreign equivalent degree to a U.S. bachelor’s degree. As stated above, the regulation sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree. The combination of a degree deemed less than the equivalent to a U.S. baccalaureate degree and a diploma or certificate does not meet that requirement. Further, the credentials evaluation does not conclude that the applicant’s course of instruction that led to the certificate to be the equivalent of any specific amount of time spent at a U.S. college or university.

The petitioner asserts that the beneficiary possessed the equivalent to a U.S. bachelor’s degree in computer information systems according to private credential evaluations from Multinational Education & Information Services, Inc., Educational Assessment, Inc. and The Trustforte Corporation. The Multinational April 1, 1998 evaluation used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H-1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). The EAI November 7, 2007 evaluation and Silberzweig February 20, 2008 evaluation confirm that the

beneficiary's foreign education alone is equivalent to a U.S. bachelor's degree based on the beneficiary's three-year bachelor's degree and the international diploma from NCC. However, the combination of the beneficiary's three-year degree and the diploma from NCC cannot be evaluated as a single foreign equivalent degree because the diploma from NCC is not a post graduate diploma following a three-year degree from an accredited university or institution approved by All-India Council for Technical Education (ACITE). CIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988).

Therefore, the record does not contain any evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree from a college or university to be qualified as a professional for third preference visa category purposes. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" in computer science, electrical engineering, mathematics or physics as set forth by the Form ETA 750, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act. Thus, the petitioner failed to demonstrate that the beneficiary is qualified for the proffered professional position, and counsel's assertions on appeal cannot overcome the grounds of denial in the director's January 29, 2008 decision. Therefore, the director's ground denying the petition under professional category must be affirmed.

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.