

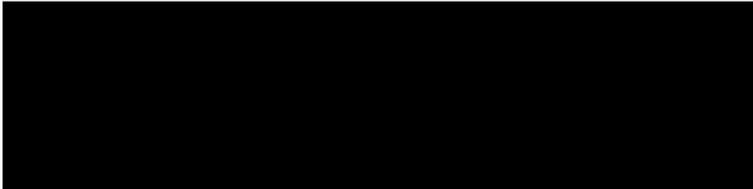
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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
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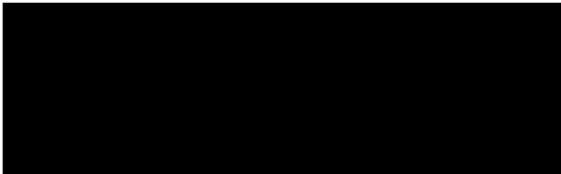
FILE: EAC-06-099-52389 Office: NEBRASKA SERVICE CENTER Date: SEP 30 2008

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

The petitioner is a finance and insurance company. It seeks to employ the beneficiary permanently in the United States as a network and computer systems administrator (UNIX administrator). As required by statute, a Form ETA 750,¹ 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 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 September 11, 2006 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 beneficiary's three-year bachelor's degree from the University of Bombay in India alone is equivalent to a four-year U.S. bachelor's degree according to evaluations from Career Consulting International, Inc. (CCI), and Marquess Educational Consultants (MEC), and that the beneficiary's three-year bachelor's degree combined with the one-year post-graduate diploma in computer management from Computer Software Consultants and many certifications from Solaris 8 System Administration II to Unix are equivalent to a U.S. bachelor of science degree in management information systems, and therefore, the beneficiary met the minimum educational requirement of a bachelor's degree in computer science, management or science as set forth on the Form ETA 750.

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.

¹ After March 28, 2005, the correct form to apply for labor certification is the Form ETA 9089.

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 Unix administrator. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	Education	
	Grade School	8 [years]
	High School	4 [years]
	College	4 [years]
	College Degree Required	BS
	Major Field of Study	Comp[uter] Sci[ence] / Management / Science

The applicant must also have three years of experience in the job offered. The duties of the proffered position are delineated at Item 13 of the Form ETA 750A and need not be recited in this decision. Item 15 of Form ETA 750A does not reflect any other special requirements.

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.² On appeal, counsel submitted a brief, evaluations from ██████████³ of CCI and ██████████ of MEC. Other relevant evidence in the record includes the beneficiary's certificates of passing the first, second and third year Bachelor of Commerce Degree Examination and marks obtained in these examinations issued by the University of Bombay in India, Diploma in Computer Management and statements of marks from Computer Software Consultants (CSC) in India, certificates from Sun Microsystems, FileNET, Brainbench, Webs Management and Prime, and evaluations from The Trustforte Corporation (Trustforte) and Foundation for International Services, Inc. (FIS). The record does not contain any further evidence concerning the beneficiary's educational qualifications. Because the record does not contain any evidence that the beneficiary obtained a single four-year bachelor's degree or foreign equivalent degree in computer science,

² 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).

³ ██████████ indicates that she has a Master's degree from the Institute of Transpersonal Psychology and a doctorate from Ecole Superieure Robert de Sorbon but does not indicate the field in which she obtained her doctorate. According to its website, www.sorbon.fr/index1.html, Ecole Superieure Robert de Sorbon awards degrees based on past experience.

⁴ ██████████ indicates he has a "canonical diploma of Sacrae Theologiae Professor" from St. David's Oecumenical Institute of Divinity, which he equates to a Doctorate of Divinity.

management or science prior to the priority date, the AAO issued a request for evidence (RFE) on January 29, 2008 granting 12 weeks to respond. However, to date, more than seven months, no response from the petitioner has been received. This office will adjudicate the appeal based on evidence in the record.

The original Form ETA 750 was accepted on May 31, 2002 and certified on December 5, 2005. The ETA 750 in the instant case was filed and certified for the position of Unix administrator. DOL assigned the occupational code of 15-1071.00, network and computer systems 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/find/result?s=15-1071.00&g=Go> (accessed September 8, 2008) and its extensive description of the position and requirements for the position most analogous to network and computer systems administrator position, the position falls within Job Zone Four requiring "considerable preparation." 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/15-1071.00#JobZone> (accessed September 8, 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 network and computer systems 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.⁵ In this case, the petitioner checked box e in Part 2 of the I-140 form, which is for either a professional or a skilled worker, but the director analyzed and denied the petition under the professional category. On appeal, the petitioner did not disagree with the director's analysis under the professional category, nor did the petitioner specifically request for classification under the skilled worker category. Further, the Form ETA 750 does not indicate that the employer would accept any alternate requirements in lieu of the bachelor's degree requirement. In addition, in order to determine whether the petitioner had intent to accept alternatives to a four-year U.S. bachelor's degree and thus sought to classify the beneficiary under the skilled worker category, the AAO requested in the RFE dated January 29, 2008 for evidence of such intent in forms of correspondence with DOL, amendments to the ETA 750, results of recruitment or other forms of evidence relevant and probative to illustrating the petitioner's intent about the actual minimum requirements of the proffered position and that those minimum

⁵ 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 IT positions are not included in this section.

requirements were clear to DOL and potential qualified candidates during the labor market test. However, the petitioner has not submitted any of the requested evidence. The non-existence or other unavailability of required evidence creates a presumption of ineligibility. 8 C.F.R. § 103.2(b)(2)(i). Therefore, the AAO finds that the director properly analyzed this petition under the professional category and will adjudicate the instant appeal under the professional category only.

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 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.

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.

The beneficiary possesses a three-year bachelor of commerce degree from the University of Bombay in India. In determining whether the beneficiary possessed a single U.S. bachelor's degree or a foreign equivalent degree in computer science, management or science, as mentioned in our RFE, we have reviewed the Electronic Database for Global Education (EDGE) created by the American Association of Collegiate Registrars and Admissions Officers (AACRAO). AACRAO, according to its website, <http://www.aacrao.org>, is "a nonprofit, voluntary, professional association of more than 10,000 higher education admissions and registration professionals who represent approximately 2,500 institutions in more than 30 countries." Its mission "is to provide professional development, guidelines and voluntary standards to be used by higher education officials regarding the best practices in records management, admissions, enrollment management, administrative information technology and student services." According to the registration page for EDGE, <http://aacraoedge.aacrao.org/register>, EDGE is "a web-based resource for the evaluation of foreign educational credentials." EDGE provides a great deal of information about the educational system in India. While it confirms that a bachelor of science degree is awarded upon completion of two or three years of tertiary study beyond the Higher Secondary Certificate (or equivalent) and represents attainment of a level of education comparable to two to three years of university study in the United States, it does not suggest that a three-year degree from India may be deemed a foreign equivalent degree to a U.S. baccalaureate. A bachelor's 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 commerce degree from the University of Bombay in India cannot be considered a foreign equivalent degree.

EDGE also discusses both Post Secondary Diplomas, for which the entrance requirement is completion of secondary education, and Post Graduate Diplomas, for which the entrance requirement is completion of a

two- or three-year baccalaureate. EDGE provides that a Post Secondary Diploma is comparable to one year of university study in the United States but does not suggest that, if combined with a three-year degree, may be deemed a foreign equivalent degree to a U.S. baccalaureate. EDGE further asserts that a Postgraduate Diploma following a three-year bachelor's degree may "represent attainment of a level of education comparable to a bachelor's degree in the United States." The "Advice to Author Notes," however, provides:

Postgraduate Diplomas should be issued by an accredited university or institution approved by the All-India Council for Technical Education (AICTE). Some students complete PGDs over two years on a part-time basis. When examining the Postgraduate Diploma, note the entrance requirement and be careful not to confuse the PGD awarded after the Higher Secondary Certificate with the PGD awarded after the three-year bachelor's degree.

The beneficiary also holds a one-year diploma in computer management from CSC in India, and certificates from Sun Microsystems, FileNET, Brainbench, Webs Management and Prime. The AAO accessed the All-India Council for Technical Education (AICTE)'s website, which does not list CSC or any of these certificate issuers as an institute accredited by AICTE. The record does not contain any evidence showing that any of these diploma or certificates is issued for completion of a postgraduate program upon a three-year bachelor's degree. Therefore, the beneficiary's diploma from CSC or any of certificates submitted in the record cannot be considered as a post-graduate diploma or senior year level of undergraduate diploma from an accredited institute following a three-year bachelor's degree, and thus, the beneficiary's three-year bachelor's degree plus his diploma are not equivalent to a U.S. baccalaureate.

The petitioner asserts that the beneficiary possessed the equivalent to a U.S. bachelor's degree according to private credential evaluations from Trustforte, FIS, CCI and MEC. Initially, the petitioner submitted evaluations dated December 30, 1998 from Trustforte (Trustforte December 30, 1998 evaluation) and dated January 10, 2001 from FIS (FIS January 10, 2001 evaluation). The FIS January 10, 2001 evaluation evaluated the beneficiary's bachelor of commerce degree from the University of Bombay as equivalent to three years of university-level credit from an accredited college or university in the United States, however, it used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. *See* 8 C.F.R. § 214.2(h)(4)(iii)(D)(5). While the Trustforte December 30, 1998 evaluation correctly evaluated the beneficiary's bachelor of commerce degree from the University of Bombay as equivalent to the completion of three years of academic studies leading to a baccalaureate degree from an accredited U.S. institution of higher education, it evaluated the beneficiary's diploma in computer management from CSC as equivalent to the completion of no less than one year of academic studies leading to a bachelor of science degree in computer science from an accredited U.S. institution of higher education. However, the Trustforte December 30, 1998 did not provide any supporting evidence showing that the beneficiary's diploma from CSC is a postgraduate diploma.

As noted above, the record does not contain any evidence showing that CSC is an accredited university or institution approved by AICTE, that the entrance requirement for the diploma program at CSC is the completion of a bachelor's degree program, and that CSC provides bachelor degree or college senior level education to its students. Therefore, the conclusion of the Trustforte December 30, 1998 evaluation that the

beneficiary's one-year diploma in computer management at CSC in India is a postgraduate diploma awarded after the three-year bachelor's degree is without evidentiary support.

On appeal, counsel also submitted evaluations from [REDACTED] of CCI and [REDACTED] of MEC. Both [REDACTED] and [REDACTED] conclude that the beneficiary completed 120 credits. [REDACTED] reaches this conclusion by assigning 6.67 credits to each course the beneficiary took. While she explains that her "process" includes using "unit credits" or "clock hours of instruction" from academic records to determine the number of credits, the beneficiary's transcript in the record does not include either figure. Both [REDACTED] and [REDACTED] conclude that, despite the far greater number of courses in business and commerce, the beneficiary has a Bachelor of Science with a concentration in Computer Science.

In his evaluation concluding that the beneficiary's three-year degree following 12 years of primary and secondary education is equivalent to 120 credits and a four-year degree in the United States, [REDACTED] relies on *Snapnames.com, Inc. v. Chertoff*, 2006 WL 3491005 (D. Or. 2006). The judge in that case, however, found that CIS is entitled to deference in interpreting its own regulatory definition of advanced degree. *Id.* at *11. More specifically, the judge found that CIS was entitled to interpret "a degree" in the context of a professional and advanced degree professional to exclude an individual with an Indian three-year degree followed by membership in the Institute of Chartered Accountants of India. *Id.* at *10-11. In the matter before us, the beneficiary only has a three-year degree. Thus, the beneficiary in this matter has less education than the beneficiary in *Snapnames.com, Inc.*

Furthermore, in contrast to the broad precedential authority of the case law of a United States circuit court, the AAO is not bound to follow the published decision of a United States district court in cases arising within the same district. *See Matter of K-S-*, 20 I&N Dec. 715 (BIA 1993). The reasoning underlying a district judge's decision will be given due consideration when it is properly before the AAO; however, the analysis does not have to be followed as a matter of law. *Id.* at 719. In addition, as the published decisions of the district courts are not binding on the AAO outside of that particular proceeding, the unpublished decision of a district court would necessarily have even less persuasive value.

The evaluations provide that the beneficiary's Indian education would include "120 contact hours" and that these would be equivalent to 120 U.S. credit hours, which would be the normal course requirement for a U.S. Bachelor's degree. From the information provided, it is not clear that a "contact hour" would be the same or directly equivalent to a U.S. "credit hour." In the Indian system, students spend more time in the classroom providing more "contact hours," whereas the U.S. system calculates time spent studying outside the classroom into the credit hour determination.⁶ The measures are based on two separate calculations and therefore cannot be considered as equivalent, or interchangeable.

⁶ U.S. students "are assumed to spend two hours of outside preparation for every 1 hour of lecture." [REDACTED], The University of Texas at Austin, "Assigning Undergraduate Transfer Credit: It's Only an Arithmetical Exercise," from http://www.handouts.acrao.org/am07/finished/F034p_M_Donahue.pdf accessed February 19, 2008. As the Indian system is not based on credits, but is exam based, transfer credits are based on a calculation of the number of exams taken multiplied to reach "a base line of 30" for credit conversion as the systems do not readily equate. *Id.*

However, as previously discussed, a three-year degree from India may not be deemed a foreign equivalent degree to a U.S. baccalaureate since a bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977).

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 persuasive evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree in computer science, management or science 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, management or science, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act.

In addition, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), providing evidentiary requirements for “skilled workers,” states the following:

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*, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

(Emphasis added).

Thus, for petitioners seeking to qualify a beneficiary for the third preference “skilled worker” category, the petitioner must produce evidence that the beneficiary meets the “educational, training or experience, and any other requirements of the individual labor certification.” In the instant case, the certified ETA 750 requires four years of college studies, a bachelor’s degree in computer science, management or science and three years of experience in the job offered. The beneficiary’s education from a three-year bachelor of commerce degree program at the University of Bombay and a one-year diploma in computer management program at CSC cannot be considered as equivalent to a four-year U.S. bachelor’s degree in computer, management or science because the degree is not in one of the required fields and the diploma from CSC is not a postgraduate diploma from an accredited university or institution approved by AICTE after the three-year bachelor’s degree.

Therefore, regardless of the category sought, the beneficiary must have a four-year bachelor’s degree or its foreign equivalent in computer science, management or science and three years of work experience in the job offered. As the beneficiary lacks the degree required by the petitioner on the labor certification, the beneficiary cannot qualify under either the professional or the skilled worker category.

Counsel also submitted a copy of a letter dated January 7, 2003 from Efren Hernandez III of the Business and Trade Services, expressing his opinion about the possible means to satisfy the requirement of a foreign equivalent of a U.S. advanced degree for purposes of 8 C.F.R. § 204.5(k)(2). In the letter, Mr. Hernandez states that he believes that not only a single foreign degree may satisfy the equivalency requirements.

At the outset, it is noted that private discussions and correspondence solicited to obtain advice from CIS are not binding on the AAO or other CIS adjudicators and do not have the force of law. *Matter of Izummi*, 22 I&N 169, 196-197 (Comm. 1968); *see also*, Memorandum from Thomas Cook, Acting Associate Commissioner, Office of Programs, U.S. Immigration & Naturalization Service, *Significance of Letters Drafted By the Office of Adjudications* (December 7, 2000).

Moreover, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not a combination of degrees, diplomas or employment experience. Additionally, although 8 C.F.R. § 204.5(k)(2), as referenced by counsel and in Mr. Hernandez' correspondence, permits a certain combination of progressive work experience and a bachelor's degree to be considered the equivalent of an advanced degree, there is no comparable provision to substitute a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. We do not find the determination of the credentials evaluation probative in this matter. It is further noted that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah*, at 245.

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 September 11, 2006 decision. Therefore, the director's ground for denying the petition under the professional category must be affirmed.

Beyond the director's decision and counsel's assertions on appeal, the AAO has identified additional grounds of ineligibility and will discuss these issues. An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *See Spencer Enterprises, Inc. v. United States*, 299 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003); *see also Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a de novo basis).

As noted previously, Form ETA-750 requires three years of experience in the job offered, i.e., network and computer systems administrator or UNIX administrator. The Form ETA 750 does not specify that the petitioner might accept experience in any related occupation. The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The priority date in the instant case is May 31, 2002.

The regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received.

The record contains letters submitted pertinent to the beneficiary's experience, however, many of them cannot be considered as regulatory-prescribed experience letters. Job offer and accept letters and the beneficiary's resume do not meet the regulatory-prescribed requirements, and thus cannot be accepted as primary evidence to establish the beneficiary's qualifications. As required by the regulation, an experience letter must be from the beneficiary's former employer with the name, address and title of the writer and a specific description of the duties performed by the beneficiary. Only the experience obtained before the priority date can be used to qualify the beneficiary for the proffered position. The experience letter must contain the title or position the beneficiary held with that employer, must verify the beneficiary's full-time employment, including the starting and ending months and years. Without this information, the AAO cannot determine whether the experience possessed by the beneficiary meets the requisite three years of experience as a full-time UNIX administrator prior to May 31, 2002.

The experience letter dated April 20, 2001 from [REDACTED], International Compensation Manager of the Equitable Life Assurance Society of the United States, states that the beneficiary "is an employee as a Technology Systems Analyst." However, the letter does not provide any information about the duration of the employment and duties the beneficiary performed. In addition, it is not clear whether the experience as a Technology Systems analyst qualifies him to perform the duties of the proffered position.

The experience letter dated June 16, 1999 from [REDACTED], CEO & Sr. V.P. of Aplab Limited in India, states that the beneficiary was employed as a manager – EDP & MIS with them from October 12, 1998 to March 31, 1999. However, the letter verifies only five and a half months of experience, and it does not contain a specific description of duties the beneficiary performed. Therefore, without such description of duties, the AAO cannot determine whether his five and a half months of experience as an EDP & MIS manager is qualified to be part of the requisite three years of experience for the proffered position.

The experience letter dated June 10, 1998 from [REDACTED], Chief, Administrative Services of the Institute of Banking Personnel Selection, states that the beneficiary "is working with us as Manager – EDP since 19.6.1977." The letter does not indicate the ending date of the employment. The record contains another letter dated July 15, 1998 from [REDACTED], Manager Administration of the same organization, which indicates the beneficiary ended the employment on July 15, 1998. Even if considering both letters, only thirteen months of experience is verified, and the letter does not contain a specific description of duties the beneficiary performed. Therefore, without such description of duties, the AAO cannot determine whether his one year of experience as a manager-EDP is qualified to be part of the requisite three years of experience for the proffered position.

The experience letter dated April 30, 1997 from [REDACTED], Director of Infotech (India) Pvt. Ltd., states that the beneficiary worked with them "since March 1, 1996 to till date as Marketing Manager." As indicated clearly, it verifies only thirteen months of experience for the beneficiary and it does not contain a specific description of duties the beneficiary performed. Without such description of duties, it is unlikely that the experience as a

marketing manager could be qualified to be part of the requisite three years of experience for the proffered position as a network and computer systems administrator (UNIX administrator).

The record also contains three letters pertinent to the beneficiary's employment history from Datamatics Consultants Ltd and Emirates Airline. According to these letters, the beneficiary worked for Datamatics as an EDP Assistant from September 15, 1981 to January 5, 1984 and worked for Emirates Airline in Operations, Information Technology Department since August 1985, as a junior analyst/programmer in the Software Development Team from September 1989 to January 1991, and as Shift Leader-Computer Operations from January 1991. However, these letters do not contain a specific description of duties the beneficiary performed. Therefore, without such description of duties, the AAO cannot determine whether the beneficiary's experience with these companies qualifies him to perform the duties described in Item 13 of the Form ETA 750A. Furthermore, the AAO finds that none of the positions verified in these letters can be considered a qualifying experience for the job offered. Since the ETA 750 clearly requires three years of experience in the job offered without indicating that the petitioner would accept experience in any related or unrelated occupations to meet the experience requirement, these experience letters do not establish the beneficiary's qualifying experience.

Therefore, The petitioner failed to demonstrate that the beneficiary possessed the requisite three years of experience as a network and computer systems administrator/UNIX administrator prior to the priority date with evidence required by the regulation at 8 C.F.R. § 204.5(g)(1).

Additionally, the record does not contain sufficient evidence of the petitioner's continuing ability to pay the proffered wage beginning on the priority date.

The regulation at 8 C.F.R. § 204.5(g)(2) states:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements. In a case where the prospective United States employer employs 100 or more workers, the director may accept a statement from a financial officer of the organization which establishes the prospective employer's ability to pay the proffered wage.

The record contains a letter dated January 24, 2006 from [REDACTED], Assistant Vice President, Human Resources of the petitioner submitted as evidence of the ability to pay for a petitioner with 100 or more employees pursuant to the regulation at 8 C.F.R. § 204.5(g)(2). However, given the record as a whole and the petitioner's history of filing petitions, we find that CIS need not exercise its discretion to accept the letter from [REDACTED]. It does not appear that [REDACTED] is the financial officer of the petitioner as required by the regulation, nor does the letter contain reliable figures of net income or net current assets for 2002 through the present to establish the petitioner's continuing ability to pay the proffered wage from the priority date to the present. In addition, CIS records indicate that the petitioner filed eight other Form I-140

petitions in 2006 and thirteen in 2007, and has filed more than 100 Form I-129 nonimmigrant petitions since 2004. Consequently, CIS must also take into account the petitioner's ability to pay the petitioner's wages in the context of its overall recruitment efforts. Given that the number of immigrant and nonimmigrant petitions, we cannot rely on a letter from an assistant vice president of human resources referencing the ability to pay a single beneficiary.

According to the regulation at 8 C.F.R. § 204.5(g)(2), the petitioner must demonstrate the ability to pay the proffered wage until the beneficiary obtains lawful permanent residence. The priority date in the instant case is May 31, 2002, and therefore, the petitioner must establish the ability to pay the proffered wage from 2002 to the present. In determining the petitioner's ability to pay the proffered wage during a given period, CIS will first examine whether the petitioner employed and paid the beneficiary during that period. In the instant case, the petitioner submitted the beneficiary's W-2 forms for 2004 and 2005, which shows that the petitioner paid the beneficiary at the rate of equal or greater than the proffered wage of \$60,000 per year in these two years. The submitted paystubs for certain periods in 2006 show that the petitioner paid the beneficiary the proffered wage in early 2006. However, the petitioner did not submit the beneficiary's W-2 forms or other documentary evidence showing that the petitioner paid the beneficiary the proffered wage in 2002 and 2003. Therefore, the petitioner failed to establish its ability to pay the proffered wage through the examination of wages actually paid to the beneficiary for 2002, 2003, 2006 and the present year. The petitioner is obligated to demonstrate that it could pay the proffered wage in these relevant years with its net income or net current assets.

If the petitioner does not establish that it employed and paid the beneficiary an amount at least equal to the proffered wage during that period, CIS will next examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is supported by case laws. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (citing *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); see also *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983).

As an alternate, CIS will review the petitioner's assets. The petitioner's total assets include depreciable assets that the petitioner uses in its business. Those depreciable assets will not be converted to cash during the ordinary course of business and will not, therefore, become funds available to pay the proffered wage. Further, the petitioner's total assets must be balanced by the petitioner's liabilities. Otherwise, they cannot properly be considered in the determination of the petitioner's ability to pay the proffered wage. Rather, CIS will consider net current assets as an alternative method of demonstrating the ability to pay the proffered wage. Net current assets are the difference between the petitioner's current assets and current liabilities.⁷ A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. A corporation's year-end

⁷According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets.

However, the petitioner did not submit the petitioner's federal tax returns, annual reports or audited financial statements for 2002 (the year of the priority date), 2003, 2006 and the present. Despite the AAO's request in its RFE for evidence to establish the petitioner's ability to pay the proffered wage for 2002, 2003, 2006 through the present, the petitioner failed to respond to the RFE and submit the requested evidence to establish its continuing ability to pay the proffered wage. Without the petitioner's federal tax returns, annual reports or audited financial statements for 2002, 2003, 2006 and the present, the AAO cannot determine whether the petitioner had the ability to pay the proffered wage in these relevant years, and thus, the petitioner failed to establish its continuing ability to pay the proffered wage beginning on the priority date.

If the instant petition were the only petition filed by the petitioner, the petitioner would be required to produce evidence of its ability to pay the proffered wage to the single beneficiary of the instant petition. However, where a petitioner has filed multiple petitions for multiple beneficiaries which have been pending or approved simultaneously, the petitioner must produce evidence that its job offers to each beneficiary are realistic, and therefore, that it has the ability to pay the proffered wages to each of the beneficiaries of its pending petitions, as of the priority date of each petition and continuing until the beneficiary of each petition obtains lawful permanent residence. *See Mater of Great Wall*, 16 I&N Dec. 142, 144-145 (Acting Reg. Comm. 1977) (petitioner must establish ability to pay as of the date of the Form MA 7-50B job offer, the predecessor to the Form ETA 750 and ETA Form 9089). *See also* 8 C.F.R. § 204.5(g)(2). As previously mentioned, the record shows that the petitioner filed eight immigrant petitions for other beneficiaries in 2006 and thirteen immigrant petitions in 2007. The record does not contain any evidence showing that the petitioner paid each of these beneficiaries proffered wages in 2006 and 2007, nor did the petitioner submit any evidence showing that the petitioner had sufficient net income or net current assets to pay all proffered wages in 2006 and 2007. Therefore, the petitioner failed to establish its ability to pay for all the 21 pending or approved petitions filed in 2006 and 2007 during the period from each priority date to each of the beneficiary obtains lawful permanent residence.

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.