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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: EAC 01 124 54454 Office: VERMONT SERVICE CENTER Date: JUN 19 2002

IN RE: Petitioner: [redacted]
Beneficiary:

Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3)

IN BEHALF OF PETITIONER:

[redacted]

COPY

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which 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 which 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 the Service 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 which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Helen E. Crawford for

Robert P. Wiemann, Director,
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Vermont Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a wholesaler of cigarettes, candy, and tobacco. It seeks to employ the beneficiary permanently as a marketing and sales manager. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification.

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.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's filing date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is March 19, 1997.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of marketing and sales manager required a Bachelor's degree in Liberal Arts, and two years of experience in the job offered.

The director determined that the petitioner had not established that the beneficiary had the required Bachelor's degree and denied the petition.

On appeal, counsel submits another educational evaluation from the Trustforte Corporation and argues that:

> The beneficiary in addition to that background also attended Quaid I Azam University where he was awarded a Master of Business Administration. This degree has been evaluated and a copy of that evaluation is attached. It indicates that the beneficiary has the academic equivalent of a Bachelor of Business Administration from

an accredited U.S. college or university. It was attained prior to his entry in the country.

The record contains an educational evaluation from Zicklin Business which states that the beneficiary has satisfied substantially similar requirements to the completion of two years of academic studies leading to a Bachelor's Degree from an accredited institution of higher education in the United States and has, as a result of his progressively more responsible employment experiences, (3 years of experience= 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in business administration from an accredited university in the United States. The petitioner has not indicated, however, that a combination of education and experience can be accepted as meeting the minimum educational requirements stated on the labor certification.

Counsel states that the petitioner has submitted documentation to establish that the beneficiary had a combination of education and experience to meet the requirements set forth in the Form ETA 750 prior to the filing date of the petition. The three year experience for one year of education rule used in the evaluation, however, is applicable to nonimmigrant H1B petitions, not immigrant petitions. The beneficiary is required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

On appeal, counsel asserts that the beneficiary has a foreign degree equivalent to a bachelor's degree in business administration. Counsel states that the petitioner is not attempting to rely on a combination of work experience and education as the equivalent of a bachelor's degree in business administration, but rather that the beneficiary possesses a foreign degree that is the equivalent of the required degree. In support of this claim, counsel points to the education evaluation performed by the Trustforte Corporation. Counsel also asserts that the beneficiary's graduate degrees qualify him for the position.

The record contains no transcripts from Quaid -i- Azam University in support of this assertion, nor did the beneficiary list any graduate courses or degrees on the ETA 750. Doubt cast on any aspect of the petitioner's proof may lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582 (BIA 1988).

The issue here is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary had a bachelor's degree in liberal arts on March 19, 1997. Therefore, 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 sustained that burden.

ORDER: The appeal is dismissed.