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U.S. Department of Homeland Security
Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass, 3/F
425 Eye Street N.W.
Washington, D.C. 20536



File: [Redacted] Office: TEXAS SERVICE CENTER

Date: DEC 13 2003

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

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 preference visa petition was denied by the Acting Director, Texas Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is a hotel holding company. It seeks to employ the beneficiary permanently in the United States as a promotion manager. As required by statute, the petition is accompanied by a Form ETA 750 Application for Alien Employment Certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the requirements for the proffered position as stated on that approved Form ETA 750 labor certification.

On appeal, counsel submits a brief.

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 Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

8 CFR § 204.5(l)(3)(ii) states:

(B) *Skilled workers.* 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.

(C) *Professionals.* 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.

Eligibility in this matter hinges on the petitioner demonstrating that the beneficiary has the qualifications stated on the ETA 750 labor certification. The ETA 750 labor certification submitted in this case clearly states that the proffered position requires that the beneficiary have four years of college culminating in a bachelor's of arts degree in sales and marketing and two years of experience in sales and marketing.

With the petition counsel submitted no evidence that the beneficiary possesses the requisite four-year bachelor's degree and two years of experience in Sales & Marketing. Therefore, the Texas Service Center, on July 15, 2002, requested evidence that the beneficiary possesses those prerequisites.

In response, counsel submitted a diploma from the International School of French Language and Culture in Paris. That diploma indicates that the beneficiary demonstrated proficiency in the French language. Further, counsel submitted a Certificate of Accomplishment showing that the beneficiary had successfully completed a course in Oracle and Developer 2000 software.

As to the beneficiary's work experience, counsel submitted a photocopy of a letter, dated November 30, 1988, on letterhead of Dharat Hotels, Ltd., and purportedly signed by the general manager of that company. That letter states that the beneficiary worked for that company as a sales and marketing manager from January 15, 1984 until the date of that letter.

Counsel also provided a photocopy of a letter, dated May 30, 1997, on Hotel India Continental letterhead, and purportedly signed by the president of that company. That letter states that the beneficiary worked for that hotel from December 10, 1990 to the date of that letter as senior manager.

Further still, counsel provided a letter, dated July 25, 2002, on the letterhead of one of the petitioner's motels and purportedly signed by the corporation's president. That letter states that the beneficiary has worked for that company since April 1999 as a sales and marketing manager.

Counsel submitted a diploma showing that the beneficiary received a bachelor or arts degree in sociology from Osmania University in India in 1982. Counsel also submitted the report of an educational evaluator. The educational evaluation stated that the beneficiary's degree is a three-year degree and the equivalent of an associate's degree earned in the United States. The evaluation further stated the opinion that the beneficiary's

degree, coupled with her work experience, is the equivalent of a four-year degree from a United States institution with majors in sociology, and sales and management.

The Acting Director, Texas Service Center, found that the petitioner had not established that the beneficiary has a United States bachelor's degree or equivalent foreign degree and denied the petition on August 21, 2002.

On appeal, counsel asserts that the beneficiary's education and experience are the equivalent of a United States bachelor's degree in sales and marketing. Counsel made no further argument and submitted no additional evidence pertinent to the beneficiary's qualifications.

The result in this matter is the same whether the petition is analyzed as a petition for a professional under Section 203(b)(3)(A)(ii) of the Act or as a petition for a skilled worker under Section 203(b)(3)(A)(i) of the Act. If the petition is for a professional then, pursuant to CFR § 204.5(l)(3)(ii)(C) the petitioner must show that the beneficiary has a bachelor's degree in the field of the proffered position which, in this case, is sales and management, and that such a degree is a prerequisite for entry into the occupation.

If the petition is for a skilled worker then, pursuant to 8 CFR § 204.5(l)(3)(ii)(B), the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA 750 which, in this case, includes a bachelor's degree in sales and management or an equivalent foreign degree.

A foreign three-year bachelor's degree is not a "foreign equivalent degree" to a United States bachelor's degree. A United States bachelor's degree generally requires four years of education. *Matter of Shah*, 17, I&N Dec. 244 (Reg. Comm. 1977). According to India's Department of Education, the nation's educational degree structure provides for both three-year and four-year bachelor's degree programs. After 12 years of primary and upper primary school, a bachelor's degree in the arts, commerce, or the sciences may be earned after just three years of higher education. A bachelor's degree in a professional field of study such as agriculture, dentistry, engineering, pharmacy, technology, or veterinary science generally requires four years of higher education. See generally Government of India, Department of Education, *Higher Education in India, Academic Qualification Framework - Degree Structure*, (last updated October 1, 2001), available at <http://www.education.nic.in/htmlweb/higedu.htm>. If supported by a proper credentials evaluation, a four-year bachelor's degree from India might reasonably be deemed to be the "foreign equivalent degree" to a United States bachelor's degree. However, in *Matter of Shah*, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from

India as the equivalent of a United States bachelor's degree because the degree did not require four years of study. *Matter of Shah* at 245. Based on the same reasoning, the beneficiary's three-year Bachelor of Arts degree from Osmania University will not be considered the "foreign equivalent degree" to a United States bachelor's degree for purposes of this preference visa petition.

Counsel submitted the report of an educational evaluator and urges that the beneficiary is qualified because her education and experience, taken together, are equivalent to a bachelor's degree in sociology with a second major in sales and management.

Neither section 203(b)(3)(A)(i) of the Act, nor section 203(b)(3)(A)(ii) of the act, nor the associated regulations allows the substitution of experience, in whole or in part, for the requisite education as stated on an approved labor certification. Further, this office is unable to alter the terms of an approved labor certification. In the absence of evidence that the beneficiary has a bachelor's degree in sales and management or an equivalent foreign degree, the instant 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 met that burden.

ORDER: The appeal is dismissed.