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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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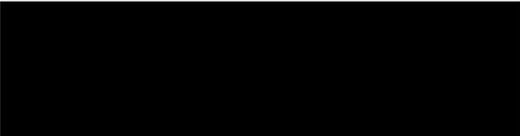
File: EAC 02 053 52910 Office: VERMONT SERVICE CENTER

Date: JAN 13 2003

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

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:



PUBLIC COPY

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 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 that originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The immigrant 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 bank. It seeks to employ the beneficiary as a senior database administrator. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the beneficiary did not possess the required work experience, as stated on the Form ETA-750, Application for Alien Employment Certification.

On appeal, counsel for the petitioner states that the director misinterpreted the law and facts in finding that the beneficiary did not possess the required work experience to qualify for the position.

8 C.F.R. 204.5(1)(3) states, in pertinent part:

(ii) *Other documentation* -- (A) *General*. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(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 occupational designation. The minimum requirements for this classification are at least two years of training or experience.

As required by 8 CFR 204.5(k)(4), the petitioner has submitted an individual labor certification, Form ETA-750, which has been endorsed by the Department of Labor. At block 14, the labor certification states that the minimum qualifications required for the position is a Master of Science degree or a Bachelor of Science degree and five years of experience in Computer Science, Finance or a related degree, and one year of experience in the job offered, or one year of experience in the related occupation of development experience with SQL servers. The labor certification does not state that any other degree specialization will satisfy the requirement.

The beneficiary in this matter possesses a Bachelor's degree in

Financial Accounting from the University of Bombay, in India, which was received in 1992. The petitioner submitted a copy of the beneficiary's degree and an evaluation from Global Education Group, Inc. Regarding the beneficiary's bachelor's degree, the evaluation states: "Using the three for one formula instituted by INS, [the beneficiary] meets the requirements for a U.S. Bachelor's degree equivalency in his field. He has the equivalent of completion of three years of undergraduate study at a regionally accredited college in the United States." The evaluation further stated that the beneficiary has three years of professional work experience in the computer information systems field.

After noting that the beneficiary did not possess the required level of experience, the director denied the petition. The director stated that "[t]he beneficiary has, as a result of formal education, a Bachelor's Degree based on three years of course work. A three year Indian degree is not equivalent to a United States four year Bachelor's degree."

On appeal, counsel for the petitioner asserts that the beneficiary has documented sufficient work experience to satisfy the requirements of the labor certification. First, counsel states that the director incorrectly interpreted the labor certification as requiring a bachelor's degree and five years of progressive experience "plus three years of work experience." Counsel asserts that the labor certification requires a bachelor's degree and five years of progressive experience. Second, counsel asserts that the evidence establishes that the beneficiary has the required five years of progressive experience.

Counsel's assertions are not persuasive. Counsel has established that the director incorrectly interpreted the labor certification as requiring an additional three years of work experience beyond the five years of progressive experience. It is apparent that the petitioner required a bachelor's degree and five years of progressive experience as the equivalent of the required master's degree and three years of experience. In evaluating the beneficiary's qualifications, the Service must look to the job offer portion of the labor certification to determine the required qualifications for the position; the Service 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 Madany v. Smith, 696 F.2d 1008 (D.C. Cir. 1983); K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006 (9th Cir. Cal. 1983); Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey, 661 F.2d 1 (1st Cir. 1981).

The petitioner has not established that the beneficiary possess the required level of experience as of the filing date of the labor certification.

Accordingly, the beneficiary does not qualify for the proffered position as he did not possess the required level of work experience as stated on the labor certification. Furthermore, the petitioner cannot be found to possess the equivalent of an advanced degree, as defined in the regulations.

In an immigrant visa petition, a petitioner must establish eligibility at the time the priority date is established. A petition may not be approved for a profession for which the beneficiary is not qualified at the time of filing. Matter of Katiqbak, 14 I&N Dec. 45, 49 (Comm. 1971).

The burden of proving eligibility for the benefit sought remains entirely 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.