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

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

**NOV 03 2003**

File:  Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:  
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).

ON BEHALF OF PETITIONER:

**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 employment-based preference visa petition was denied by the Director, Nebraska Service Center. The director's decision to deny the petition was affirmed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a second motion to reopen. The motion will be granted. The previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner is a church. It seeks to employ the beneficiary permanently in the United States as a director of adult activities. 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 as of the petition's priority date.

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 priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is January 16, 1997.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of director of adult activities required a Bachelor's degree in Theology or equivalent, and six months of experience in the job offered.

The AAO denied the petition noting that the beneficiary did not have the required Bachelor's degree.

On motion, counsel reiterates the argument that the AAO "failed to take into account the regulatory purpose of a labor certification." Counsel argues that "the insertion of the words 'or equivalent' was intended to encompass potential employees who did not have a college degree, but had a work experience and education combination

that would render the background to be equivalent to a baccalaureate degree."

Counsel's assertions are not persuasive. The labor certification requires a candidate with a specific degree. To determine whether a beneficiary is eligible for a third preference immigrant visa, CIS must ascertain whether the alien is in fact qualified for the certified job. 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 *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).

As stated by the AAO, the director properly interpreted the Form ETA-750 as stating that the position requires a bachelor's degree or a foreign equivalent degree. Because the labor certification failed to state otherwise, the director properly interpreted "bachelor or equivalent" as requiring a bachelor's degree or a foreign equivalent degree.

A degree equivalency, whether based on work experience and/or a combination of lesser degrees, will not suffice to qualify a beneficiary as an immigrant under §§ 203(b)(3)(A)(i) or (ii) of the Act when the labor certification requires a specific degree. Neither the statute nor the regulations allow for the consideration of a "work equivalency" of a bachelor's degree for this immigrant classification.

On appeal, counsel states that "the employer's minimum requirements are a combination of education and experience, which when taken together, would constitute an equivalent of a United States degree in Theology." In claiming this, the petitioner appears to be relying on the nonimmigrant regulations at 8 CFR 214.2(h)(4)(iii)(D)(5), which provide that progressively responsible work experience may be substituted for a year of education in a nonimmigrant H-1B petition. For this immigrant classification, a beneficiary must possess an actual baccalaureate degree when the labor certification requires a bachelor's degree as the required level of education.

Finally, counsel argues that the petition was submitted "not as a professional level job, but as a skilled worker job."

The result in this matter is the same whether the petition is for a professional under Section 203(b)(3)(A)(ii) of the Act, or as a

petitioner for a skilled worker under Section 203(b)(3)(A)(i) of the Act.

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 Associate Commissioner's decision of November 7, 2002 is affirmed. The petition is denied.