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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 I Street, N.W.
Washington, D.C. 20536

[REDACTED]

File: EAC 01 124 54454

Office: VERMONT SERVICE CENTER

Date:

NOV 03 2003

IN RE: Petitioner:
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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based preference visa petition was denied by the Director, Vermont 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 motion to reopen. The motion will be granted. The previous decision of the Associate Commissioner will be affirmed and the petition will be denied.

The petitioner is a wholesaler of cigarettes, candy and tobacco. It seeks to employ the beneficiary permanently in the United States 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 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 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 denied the petition noting that the beneficiary did not have the required Bachelor's degree.

On motion, counsel submits a copy of a transcript in the beneficiary's name and argues that the beneficiary "has the minimum educational requirement for the position offered."

The submitted transcript indicates that the beneficiary earned an M.B.A. in Management from Quaid-I-Azam University Islamabad on October 16, 1982.

The issue here, however, 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.

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). Here, block 14 of the Form ETA-750 plainly states that a bachelor's degree in Liberal Arts is the minimum level of education required to adequately perform the certified job.

The beneficiary's foreign bachelor's degree has not been shown to be equivalent to a United States baccalaureate. Subsequently, an educational evaluator determined that the beneficiary's claimed foreign bachelor's and master's degrees equal a United States baccalaureate; however, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) is quite clear in allowing only for the equivalency of one foreign degree to a United States baccalaureate, not any other combinations of degrees, diplomas, or experience. Furthermore, in this case, doubt is cast on the existence of the beneficiary's claimed foreign master's degree. He made no mention of such a degree on the Statement of Qualifications portion of Form ETA 750, only claiming that from 1970 to 1989 he had attended and received Army diplomas from miscellaneous Army schools. It is hard to imagine that he could have forgotten that he received an academic degree (not just a diploma) from what would appear to be a non-Army university.

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 AAO's decision of June 19, 2002 is affirmed. The petition is denied.