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U.S. Department of Homeland Security
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Washington, DC 20536

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAY 06 2004

IN RE: Petitioner: [redacted]
Beneficiary:

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 of the Administrative Appeals Office 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.

Elizabeth O'Brien

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, Vermont Service Center and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an international trading company. It seeks to employ the beneficiary as a general manager pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), as a professional. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the beneficiary did not possess the required educational background, as stated on the Form ETA-750, Application for Alien Labor Certification.

Under Part 2 of the Form I-140 petition, the petitioner initially checked box "d" indicating that it sought to classify the beneficiary as "[a] member of the professions holding an advanced degree or an alien of exceptional ability." However, in a letter accompanying the Form I-140 petition, counsel specifically stated that the petitioner sought to classify the beneficiary "as a Professional under section 203(b)(3) of the Immigration and Nationality Act." Also, in response to the director's request for evidence, counsel submitted an amended copy of the Form-140 (with box "e" checked) and an additional letter stating that the "petitioner filed Form I-140 on behalf of the beneficiary for classification as [a] Professional under ***section 203(b)(3)*** rather than section 203(b)(2)" of the Act.

The regulation at 8 C.F.R. § 204.5(l)(2) states, in pertinent part: "*Professional* means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

> 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.

As required by 8 C.F.R. § 204.5(l)(3)(i), 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 a bachelor's degree is the minimum level of education required for a worker to perform the job duties in a satisfactory manner. The labor certification specifically requires that the major field of study be in Business Management. The labor certification does not state that any other level of education will satisfy the requirement.

Also submitted in support of the petition were three educational evaluations. The first credentials evaluation, from World Education Services dated March 7, 1995, concludes that the beneficiary's "Graduation Certificate" (1987) from Shanghai Foreign Languages Institute is "the equivalent of two years of undergraduate study in Japanese language and literature at an accredited institution in the United States."

The second educational evaluation, from Globe Language Services, Inc., dated September 16, 1996, concludes that the beneficiary's "Master of Arts Degree in Chinese Literature" (1992) from Keio University in Japan is "the equivalent of a Master's Degree in Chinese Literature from a regionally accredited institution

of higher education in the United States." The labor certification in the present matter, however, requires a degree in "Business Management."

The most recent educational evaluation, from Globe Language Services, Inc. dated September 5, 2002, states that the beneficiary's "Graduation Certificate" (1987) from Shanghai Foreign Languages Institute is the U.S. equivalent of "[t]wo years of undergraduate study from a regionally accredited educational institution in the United States." The evaluation further states:

> [I]t is our conclusion that [the beneficiary] has the equivalent of two years of undergraduate study through formal education and an additional two academic years in Business Administration and Management by way of employment and the practice of a profession, that together represent, in scope and intent, the equivalent of completion of a Bachelor's Degree in Business Administration and Management from a regionally accredited institution of higher education in the United States.

Aside from the fact that the labor certification requires a bachelor's degree in "Business Management" (rather than "Chinese literature" or "Japanese language and literature"), it is noted that the most recent credentials evaluation states that the beneficiary has the equivalent of a United States baccalaureate degree in Business Management based on a combination of factors (undergraduate study and employment experience). The evaluation erroneously references the regulation at 8 C.F.R. § 214.2(h)(4)(iii)(D)(5), which pertains to nonimmigrant temporary workers, and concludes that "six years of [the beneficiary's] 13 years and 11 months of progressively advanced work experience...represents the equivalent of two academic years of undergraduate study."[1] Here the evaluation erroneously relies on nonimmigrant regulations rather than the pertinent immigrant regulations.

The director denied the petition, stating that the petitioner had not established the beneficiary meets the requirements specified in the labor certification. The director noted that relevant regulations do not allow for alternatives to the requirement of the specific degree required on the Form ETA-750.

On appeal, counsel argues that the Service Center "ignored the expert's evaluation" and that "nothing in the regulation excludes those whose progressively advanced work experience relating to the field has amounted to the equivalent of a U.S. baccalaureate degree." We find, however, that the director's decision was couched in the pertinent regulation. The requirement of a "foreign equivalent degree" at 8 C.F.R. § 204.5(l)(3)(ii)(C) indicates that the alien must possess a single degree that is, standing alone, equivalent to a U.S. baccalaureate. There is no standing precedent or provision in the statute or the regulations that would allow a beneficiary to qualify under section 203(b)(3)(A)(ii) of the Act with anything less than a full baccalaureate degree in the relevant field. A United States baccalaureate degree is generally found to require four years of education. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977).

In regard to the educational evaluations, Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, CIS is not required to accept or may give less

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[1] A candidate may not qualify as a professional under section 203(b)(3)(A)(ii) of the Act based on a degree equivalency composed of work experience and education. Neither the statute nor the regulations allow for "work equivalency" of a bachelor's degree for this immigrant classification. For this classification, the beneficiary must possess an actual baccalaureate degree to meet the requirements stipulated by the labor certification.

weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

Counsel also argues that the Service Center "erred in stating that no evidence was submitted to support [the petitioner's] claim that the beneficiary has the required five years of experience in the management field." We withdraw the director's finding in that regard. The record contains a letter from the Shanghai Painting Manufacturing Factory, the beneficiary's former employer, indicating that he has more than five years of managerial experience.

In this case, the ETA-750 labor certification specifically requires a bachelor's degree in Business Management and five years of managerial experience. CIS will not accept "work equivalency" when a labor certification plainly and expressly 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).

Based on the evidence presented, the petitioner has not established that the beneficiary qualifies for the proffered position as he does not possess the specific degree required by the labor certification. Accordingly, the beneficiary is not eligible for classification sought.

In visa petition proceedings, 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.