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U.S. Citizenship  
and Immigration  
Services



SEP 03 2004

FILE: EAC 02 139 53423 Office: VERMONT SERVICE CENTER

Date:

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)

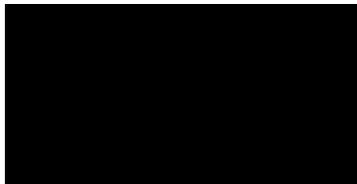
ON BEHALF OF PETITIONER: SELF-REPRESENTED

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.

Robert P. Wiemann, Director  
Administrative Appeals Office

Cc: [Redacted]



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prevent clearly unwarranted  
invasion of personal privacy

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

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a skilled worker or professional. The petitioner is a medical supplies/equipment exporting firm. It seeks to employ the beneficiary as a director of international sales and marketing. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because he determined that the petitioner failed to demonstrate that the beneficiary had the required educational credentials as stated on the approved labor certification. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner asserts that the beneficiary has the necessary credentials to meet the qualifications set forth in the approved labor certification.<sup>1</sup>

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 other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, 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, 8 U.S.C. § 1153(b)(3)(A)(ii), provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. 8 C.F.R. 204.5(d); *Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is January 13, 1998.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. The Application for Alien Employment Certification Form ETA-750A, items 14 and 15 set forth the minimum education, training, and experience that an applicant must have for the position of a director of international sales and marketing. In the instant case, item 14 shows the required number of years and type of educational background and experience an applicant for the position must have. It states the following:

14.	Education	
	College	4
	College Degree Required	Bachelors
	Major Field of Study	Business Administration

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<sup>1</sup> The petitioner's original attorney did not file the appeal. Instead, a Notice of Entry of Appearance as Attorney or Representative (Form G-28) was submitted by an entity asserting that it is a "nonprofit immigration service-provider organization, authorized by the " Branch Chief of the Examinations Operations Facilitation Program, Washington D.C." As no evidence of authorization pursuant to the requirements of 8 C.F.R. § 292.1 has been submitted by this entity and no withdrawal from the petitioner's original attorney is contained in the record, the petitioner will be treated as representing itself on appeal. However, a copy of this decision is being provided to the petitioner's original attorney, as well as to the purported representative filing the appeal.

Experience  
Job Offered 4  
Related Occupation

15. Other Special Requirements      References Required

Part B of the ETA 750, signed by the beneficiary, indicates that he studied at the "Sirsyed Degree College," majoring in "Arts," between August 1974 and June 1976, but did not attain a degree. As evidence of the beneficiary's formal education, original counsel initially submitted a copy of a "Certificate of Training" from the Strato Medical Corporation, indicating that the beneficiary completed a sales training course in 1992, a certificate from the Saudi Anaesthetic Association reflecting that the beneficiary attended a scientific meeting in November 1993, and a 1994 certificate showing that the beneficiary attended a symposium held by the Saudi Oncology Symposium in October 1994.

Original counsel also submitted an evaluation report from [REDACTED] PhD of Educated Choices, LLC, dated September 15, 1996. This evaluation describes some of the beneficiary's past employment and concludes that through his 15 years and 7 months of "progressive professional employment experience," he has "achieved the professional recognition as having attained the equivalent of a U.S. Bachelor's Degree in Business Administration with an emphasis in Marketing Management."

On May 16, 2002, the director requested additional evidence from the petitioner relating to the beneficiary's education and/or training. The director advised the petitioner that the educational evaluation report, submitted with the petition, was not acceptable because it failed to consider formal education only. The director advised the petitioner that an acceptable evaluation should only consider formal education, state if the collegiate training was post-secondary education, provide a detailed explanation of the material evaluated, and briefly state the qualifications and experience of the evaluator providing the opinion. The director also instructed the petitioner to provide a copy of the beneficiary's college transcript and diploma.

In response, counsel submitted a copy of the beneficiary's resume, various copies of business correspondence and letters of recommendation referencing the beneficiary's job performance, a copy of the beneficiary's secondary school certificate, and a copy of a 1976 transcript certificate from the "Govt. Sir Syed Degree College" in Gujrat, Pakistan. This transcript indicates that the beneficiary had passed an intermediate examination in humanities.

Counsel also submitted a copy of an equivalency evaluation, dated September 13, 1996, from [REDACTED] PhD, Central Connecticut State University. Like the evaluation from Educated Choices, LLC, this report also summarizes the beneficiary's 15-year work experience and concludes that he has "demonstrated a level of professionalism at least equal to that displayed by those who have been awarded the Bachelor's Degree in Business Administration with an emphasis in Management from a U.S. college or university."

Counsel further offered a third "evaluation of education, training, and experience" from Professor [REDACTED] of the Zicklin School of Business Administration (Baruch College/City University of New York), dated June 28, 2002. Professor [REDACTED] concludes that, using the INS, (now CIS), "equivalency ratio of three years of work experience for one year of college training," the beneficiary's now 21 years of employment experience is "the equivalent of a Bachelor of Business Administration Degree, with a concentration in Marketing, from an accredited institution of higher education in the United States."

The director denied the petition on January 13, 2003. The director found that the evidence submitted did not meet the requirements of the approved labor certification because the beneficiary does not possess a Bachelor's degree in Business Administration.

On appeal, the petitioner offers copies of the previously submitted evaluation reports and asserts that the beneficiary's credentials were sufficient to be granted a labor certification by the DOL and non-immigrant status by CIS, and should therefore be approved for immigrant status.

The petitioner's assertion is not persuasive. At the outset, it is noted that CIS, not the DOL, has the final authority with regard to determining an alien's qualifications for preference status and the authority to investigate the petition under section 204(b) of the INA, 8 U.S.C. § 1154(b). This authority encompasses the evaluation of the alien's credentials in relation to the minimum requirements for the job, even though a labor certification has been issued by the DOL. *Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9<sup>th</sup> Cir. 1983); *Stewart Infra-Red Commissary v. Coomey*, 662 F.2d 1 (1<sup>st</sup> Cir. 1981); *Denver v. Tofu Co. v. INS*, 525 F. Supp. 254 (D. Colo. 1981); *Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Tex. 1989). CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. 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 Dragon Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986).

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) provides 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. To show that the alien is member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for an entry into the occupation.

The above regulation uses the singular description of a foreign equivalent degree. Thus, the plain meaning of the regulatory language sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

The labor certification clearly requires an applicant for the position required to have four years of college and a Bachelor's degree in Business Administration. A bachelor degree is generally found to require 4 years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's past work experience may not be substituted for a four-year degree. The record does not contain an official college or university record showing that the beneficiary possesses a baccalaureate degree from any institution of higher learning as required by 8 C.F.R. § 204.5(l)(3)(ii)(C). The three evaluations contained in the record erroneously focus on the beneficiary's work experience in evaluating the beneficiary's foreign credentials. The report from Dr. [REDACTED] states that the beneficiary has only achieved an equivalent level of professionalism to those that have a bachelor's degree. Dr. [REDACTED] report refers to an equivalent level of professional recognition. Professor [REDACTED] report and the petitioner's basic claim on appeal, is explicitly based on a formula of three years of employment

experience equating to one year of university-level credit. This formula applies only to nonimmigrant visas such as those cited in 8 C.F.R. § 214.2(h)(4)(iii)(D)(1), not to immigrant petitions. It is noted that 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 weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988); *Matter of Sea, Inc.*, 19&N Dec. 817 (Comm. 1988). None of these evaluations can be viewed as probative in evaluating the beneficiary's foreign education because they erroneously include the evaluation of the beneficiary's employment experience.

Even if viewed as a petition for a skilled worker, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides that the evidence must show that the alien has the education, training, or experience, and any other requirements of the individual labor certification. The labor certification does not define or accept any equivalency less than a bachelor's degree in business administration. The petitioner could have clarified or change these terms before the Form ETA 750 was certified by the DOL. Since that was not done, the director's decision must be affirmed.

Based on the evidence submitted, the AAO concurs with the director that the petitioner has not established that the beneficiary possesses a United States bachelor's degree or a foreign equivalent degree as required by the terms of the labor certification. The beneficiary is not eligible for the visa classification sought.

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 appeal is dismissed.