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U.S. Citizenship  
and Immigration  
Services



FILE: LIN-02-106-52448 Office: NEBRASKA SERVICE CENTER Date: SEP 08 2004

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.

for Robert P. Wiemann, Director  
Administrative Appeals Office

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

The petitioner is a manufacturer of stamped metal products. It seeks to employ the beneficiary permanently in the United States as a tool and die maker. 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 asserted in the labor certification application.

Section 203(b)(2)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153 (b)(2)9A), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

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.

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 education, training, and experience specified on the labor certification as of the petition's priority date. See 8 C.F.R. § 103.2(b)(12). See also *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). In this instance, it is March 3, 2000. The Form ETA 750 indicated that the position of tool and die maker required a two-year associate degree in machine tool techniques and a four year apprenticeship.

The beneficiary indicates on Form 750 Part B that he has two general education certificates and a certificate in machine tool PLC and welding in 1997, all from different institutes in Switzerland. The beneficiary also lists a certificate in English from a one-month program at the University of Wisconsin, Madison.

In response to the RFE, dated March 26, 2002, the petitioner submitted submits evidence that the beneficiary had six years of primary school, three years of secondary school and four years training at a technical and vocational college in Wattwil, Switzerland. The petitioner submitted evidence of the beneficiary having served an apprenticeship from 1993 to 1997 at Turbo-Separator AG, in Lichtensteig, Switzerland. The petitioner submitted a comparison of the apprenticeship requirements of the Swiss apprenticeship program and the State of Wisconsin program. The petitioner also submitted evidence of the beneficiary's employment as a service technician, tool and die maker and, a programmer/mechanic from November 1997 to April 2002.

The director denied the petition because the regulations governing preference classification do not provide for the substitution of work experience in lieu of a foreign equivalent of a two-year associate degree.

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).

On appeal, the petitioner states that "The Form ETA 750 was filled out in error on our part.... The confusion arises in that the normal time period to complete the required apprenticeship schooling hours is two years and

usually fulfilled through a technical college or trade school. Also, applicable college courses can be used in lieu of tool and die classroom instruction as indicated in the Apprenticeship Indenture. Thus, the listing of "2 years" arises from these factors."

The issue 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. The petitioner's claim that the two-year associate degree requirement was the result of a misunderstanding and is not required, is not persuasive. To determine whether a beneficiary is eligible for a third preference immigrant visa, Citizenship and Immigration Services (CIS), formerly the Service or INS, must ascertain whether the alien is, in fact, qualified for the certified job. 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 Restaurant*, 19 I&N Dec. 401, 406 (Comm. 1986). *See also, Mandany v. Smith*, 696 F.2d 1008, (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 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 has an associate degree required by the ETA 750. Therefore, the petitioner has not overcome the director's decision.

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 met that burden.

**ORDER:** The appeal is dismissed.