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U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

[redacted]

DEC 07 2004

FILE: [redacted]
SRC 02 184 52492 Office: TEXAS SERVICE CENTER Date:

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: 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

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Texas 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. The petitioner is a dental laboratory. It seeks to employ the beneficiary as a dental technician. As required by statute, the petition was accompanied by certification from the Department of Labor (DOL). The director denied the petition because she 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.

In pertinent part, section 203(b)(3)(A)(i) of 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.

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 May 11, 2001.

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 dental technician. In the instant case, item 14 shows the required number of years and type of educational, training, and employment experience an applicant for the position must demonstrate. It states the following:

14.	Education	
	College	2
	College Degree Required	Associate
	Major Field of Study	Dental Technology
	Training	
	No. Mos.	6
	Type of Training	on-the-job
	Experience	
	Job Offered (yrs.)	1
	Related Occupation (yrs.)	dental laboratory experience
15.	Other Special Requirements	

Superior hand-eye coordination, fine motor skills, strong artistic inclination, ability to

work with detailed and delicate fabrications.

As proof of the beneficiary's educational, training, and work experience required by the terms of the labor certification, the petitioner initially submitted copies of the beneficiary's resume, copies of a Petition for a Nonimmigrant Worker (I-129), and a copy of a diploma from Sullivan College in Louisville, Kentucky, indicating the beneficiary received a Bachelor of Science in Business Administration in December 1997. The nonimmigrant petition was signed in May 2002 and reflects that the petitioner desired to petition the alien as an administrative/operation manager.

On November 13, 2002, the director requested additional evidence in support of the beneficiary's qualifications to receive a visa classification based on the certified position of a dental technician. The director instructed the petitioner to submit evidence that the beneficiary possesses an associate degree in dental technology and one year of experience as a dental technician as required by the terms of the labor certification.

In response, the petitioner provided a copy of his grade transcript from and resubmitted a copy of his diploma from Sullivan College and a copy of his resume. The petitioner also provided an evaluation report from the dated December 3, 2002, and signed by Based on a review of the beneficiary's work experience, as set forth in his resume, as well as his baccalaureate degree in business administration from Sullivan College, concludes that the beneficiary not only holds a bachelor's degree in business administration with an option in marketing and sales management, but by combining this bachelor's degree with the beneficiary's work experience using a formula of 3 years of experience equaling 1 year of university-level credit, the beneficiary also holds the equivalent of an associate's degree in dental laboratory technology from an accredited community college in the United States.

The petitioner also submitted two letters in support of the beneficiary's qualifying prior training and experience. One letter is fro a technical director with the alien's petitioner and current employer. The other letter is from a certified dental technician and the previous owner of ' the predecessor employer of the beneficiary, which was acquired by the current petitioner in 2000. The letterhead of letter indicates that he is currently employed by the n Cincinnati, Ohio. states that "prior to entering my employment (1997-2000) [the beneficiary] studied under my direction as an unpaid apprentice for one year (1996-1997). While under my employment, he studied and worked in all aspects of Dental Technology also states that the beneficiary was the operation manager for the laboratory with responsibility for all aspects of the laboratory states that the beneficiary has worked for the petitioner since 2000 in many areas as an operations manager and has had principal responsibility in the waxing and ceramics department.

The director denied the petition, finding that the petitioner had failed to demonstrate that the beneficiary possesses an associate's degree as required by the terms of the labor certification. The director noted that the beneficiary's bachelor's degree in business administration does not comply with the terms of the labor certification, which requires nothing less than a major in dental technology. The director also found the petitioner had failed to submit sufficient evidence demonstrating that the beneficiary had six months of on-the-job training and one year of experience as a dental technician, rejecting letter as being too vague in describing the beneficiary's specific duties and dates of employment. The director further noted that the petition could not be approved because the petitioner had failed to submit Part B of the ETA 750, Statement of Qualifications of Alien.

On appeal, the petitioner's arguments are presented by does not signify what position he holds with the petitioner, however, he maintains that the petitioner was unable to recruit any U.S. workers for the certified job. He states that the petitioner is a small employer and is not familiar with the complexities of petitioning for an alien worker. He further maintains that the credentials evaluation and the letters from establish that the alien beneficiary possesses the equivalent of an associate degree in dental technology and possesses the requisite training and experience to meet the terms of the labor certification.

assertions are not persuasive. It is noted that regardless of the perceived complexities in petitioning for an alien immigrant worker, every petitioner bears the burden to establish the elements for the approval of the petition at the time of filing. A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971).

The Form ETA 750 A requires two years of college culminating in an associate's degree in dental technology. While the classification sought does not require a bachelor's 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 will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. 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 record contains an evaluation from the Foundation for which states that the beneficiary has, as a result of his bachelor's degree in business administration and his work experience in dental technology, the functional equivalent of an associate's degree in dental technology. 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, the Service 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 I&N Dec. 817 (Comm. 1988). In this case, the credentials evaluation report from the Foundation for International Services, Inc. used the rule to equate three years of experience for one year of education, but that equivalence applies to non-immigrant H1B petitions, not to immigrant petitions. It is further noted that the AAO cannot conclude that either's opinions as to the beneficiary's academic credentials is probative. There is nothing in the regulations governing immigrant petitions that permit a combination of education and experience to represent the functional equivalent of an associate degree in a particular field. The beneficiary was required to have an associate degree with a major in dental technology. The beneficiary holds a bachelor of science degree in business administration. The record does not demonstrate that the beneficiary has received any formal academic training in dental technology. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition on this basis must be affirmed.

With regard to the director's finding that the petitioner failed to establish that the beneficiary had accrued one year of work experience as a dental technician, the petitioner has submitted another letter from

appeal. It states that the beneficiary began working for the petitioner as a dental technician and a supervisor of the waxing department from October 2000 until the present.

The AAO notes that the work experience requirement specified on the labor certification is somewhat ambiguous as it appears to require one year of experience in the job offered of dental technician or an unspecified period in a related occupation defined as "dental laboratory experience." In this respect, a reasonable interpretation would be that an otherwise academically qualified applicant possessing one year of related dental laboratory experience would also satisfy the terms of the labor certification in this requirement. The total paid experience must be equal to one year's full-time employment. *See e.g.,* 20 C.F.R. § 656.21(a)(3)(J)(iii). Although the director did not mention letter in her decision, it seems to provide enough confirmation that the alien had accrued sufficient prior work experience pursuant to the requirements of 8 C.F.R. 204.5(l)(3)(ii). That regulation requires documentation from relevant current and previous employers or trainers to establish an alien's qualifying past employment experience. It must be noted, however, that letter, as well as the information given on the preference petition and labor certification raise a question as to whether the petitioner intends to employ the alien as an "operation manager—wax department" as set forth in Part 6 of the immigrant preference petition and as suggested by the nonimmigrant petition, or as a dental technician as certified by the ETA 750A and presumably as the position that was advertised in the recruitment effort. It is noted that a labor certification for a specific job offer is valid only for the particular job opportunity, the alien for whom the certification was granted, and for the area of intended employment stated on the Form ETA 750. 20 C.F.R. § 656.30(C)(2).

Finally, as a cure for the admitted oversight of failing to submit Part B of the ETA-750 with the original petition, the petitioner submits an original ETA 750B on appeal. It reflects that it was signed by the beneficiary on April 29, 2003, contemporaneously with the appeal. The regulation at 20 C.F.R. § 656.21 requires that the Application for Alien Certification must be submitted to the local Employment Service office where the petitioner proposes to employ the alien. This includes both Part A and Part B of the ETA 750. The regulation at 8 C.F.R. § 204.5 also requires the petitioner of an employment-based immigrant petition to submit the original labor certification from the Department of Labor with its initial filing of the petition. This also includes Part A and Part B of the original ETA 750. The updated ETA 750B provided on appeal, cannot be accepted as a substitute for the original document. As the complete, original ETA 750 is not contained in the record, the petition cannot be approved for this additional reason.

Based on a review of the requirements of the approved labor certification and the evidence submitted, the AAO cannot conclude that the petitioner has established that the beneficiary possesses the requisite academic credentals required by the terms of the labor certification. The AAO also finds that the petition may not be approved due to the petitioner's failure to provide the complete, original ETA 750. In absence of evidence that the beneficiary has satisfied the terms of the labor certification and that the record contains the original ETA 750, Parts A and B, the petition may not be approved.

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.