U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

U.S. Citizenship and Immigration Services

B-6

[redacted]

FILE: [redacted] Office: TEXAS SERVICE CENTER Date: JUL 12 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)

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.

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 sustained.

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 professional or skilled worker. The petitioner is an electronic connector manufacturing and distribution company. It seeks to employ the beneficiary as a sales engineer/electrical product. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary did not meet the education required by the labor certification.

On appeal, counsel submits a brief.

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.

Section 203(b)(3)(A)(ii) also 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. *Matter of Wing's Tea House,* 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 2, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, 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 sales engineer/electrical product. In the instant case, item 14 describes the college degree required as a bachelors or equivalent. The major field of study must be engineering, marketing, or related subject. The position also requires three years of experience in the job offered.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submitted a copy of his foreign masters of science degree in procurement management from the University of Strathclyde, a copy of a higher national certificate in electrical and electronic engineering from the Scottish Vocational Education Council, and an evaluation, dated June 15, 2000, from Foundation for International Services, Inc. (FIS).

The evaluation states:

> In summary, it is the judgment of the Foundation that Alan David Crighton has the equivalent [of] an associate's degree (two years) in electrical and electronics engineering technology from an accredited community college in the United States and a master's degree in purchasing, procurement and contracts from an accredited college or university in the United States.

It is noted that in *Matter of Sea Inc.*, 19 I&N 817 (Comm. 1988), provides:

> [CIS] uses an evaluation by a credentials evaluation organization of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be discounted or given less weight.

The director determined that the evidence was insufficient to establish that the beneficiary met the educational requirements as reflected on the labor certification. On July 17, 2002, the director issued an intent to deny and requested additional evidence of the beneficiary's education. The director requested the beneficiary's transcripts for his master's program and also requested that the petitioner provide another evaluation of the beneficiary's credentials.

In response, counsel submitted a copy of the beneficiary's transcripts for his master's program, a copy of *Program Handbook for Postgraduate Diploma and Master of Science Degree in Procurement Management* from the University of Strathclyde, and an evaluation, dated October 3, 2002, from Josef Silny & Associates, Inc. The evaluation states:

> attended the University of Strathclyde in Scotland, the United Kingdom. Founded in 1796, the University of Strathclyde is a recognized (accredited) public university in the United Kingdom that has a Royal Charter to award degrees. Typically, in order to be accepted into the Master's program at the University of Strathclyde, applicants must have the Bachelor's degree from an accredited institution of higher education from the United Kingdom. This is the equivalent of the U.S. Bachelor's degree at a regionally accredited institution of higher education in the United States. Applicants may also have professional qualifications which are deemed by the University to be the equivalent of a Bachelor's degree. Mature applicants may also be admitted for graduation admission based on a combination of education and experience.
>
> was awarded the degree of Master of Science in Procurement Management on July 7, 1999. This is the equivalent of the U.S. degree of Master of Business Administration in Procurement Management earned at a regionally accredited U.S. institution of higher education.

The director denied the petition, concluding that the beneficiary's educational credentials and experience are not an acceptable equivalency for a United States baccalaureate degree. The approved labor certification states that the proffered position requires a bachelor's degree or equivalent and three years of experience in the job offered.

On appeal, counsel asserts:

> FCI's immigrant visa petition was denied solely on the examiner's arbitrary determination that does not meet the degree requirement, when in fact, he holds a Master's degree in Procurement Management from the University of Strathclyde in Glasgow, which has been determined by two independent credentials evaluation companies recognized by the INS to be the equivalent of a US-awarded Master's degree in Procurement Management. As explained more fully in the submission, attached, the examiner focused not on the degree program and equivalency evaluation, but on the fact that was admitted to the master's

> program based on a combination of his education and professional experience rather than the attainment of a bachelor's degree. These qualifications are one of several criteria an applicant for the master's program can meet for admission. was accepted into a higher level degree-awarding program, completed the course of study and was awarded the equivalent of a US-awarded Master's degree in Procurement Management. The INS does not have any statutes, regulations or precedent decisions that require a petitioner to show that the beneficiary with a foreign degree (evaluated for US equivalence) must show that his underlying education would have qualified him for admission into an equivalent US program in the United States. . . .
>
> Specifically, the BCIS has contradicted its decision to deny FCI's EB-3 immigrant petition on behalf of by ***subsequently*** approving the above-referenced H-1B change of status petition, which relies on the evaluation of the same academic credentials and experience requirements presented in support of the EB-3 petition to meet the academic prerequisite for H-1B classification.

Counsel is mistaken in assuming that since the beneficiary meets the educational qualifications for a nonimmigrant H-1B petition, he automatically qualifies for an immigrant petition. There is no regulation or precedent decision that allows CIS to use the rule of equating three years of experience for one year of education to establish a beneficiary's qualifications as a potential immigrant. That equivalence applies to non-immigrant H1B petitions only, not to immigrant petitions.

However, in evaluating the beneficiary's qualifications, Citizenship and Immigration Services 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).

As the evaluation clearly states, the beneficiary's foreign degree is equivalent to a U.S. degree of master of business administration in procurement management earned at a regionally accredited U.S. institution of higher education. In addition, as stated above, CIS may not ignore a term of the labor certification, nor may it impose additional requirements. In the instant case, the beneficiary has a degree (Master's) above that needed to fulfill the requirements as reflected on the labor certification. CIS may not look to the beneficiary's qualifications before he obtained the master's degree, but must determine the beneficiary's foreign degree is equivalent to a U.S. degree in education only. CIS will not accept a combination of degrees, certificates or experience in lieu of a degree where the labor certification clearly requires a degree. In this case, the beneficiary has a master's degree, and, even though he may have entered the master's program using a combination of education and experience, the degree, itself, is equivalent to a U.S. degree and CIS may not consider it otherwise.

A petitioner must 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).

Based on the evidence submitted, the AAO concurs with counsel that the petitioner has established that the beneficiary possesses the equivalent of a United States master's degree, a degree beyond that required by the terms of the labor certification.

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 met that burden.

ORDER: The appeal is sustained.