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

U.S. Citizenship and Immigration Services

[redacted]

B6

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: JUN 17 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
for Administrative Appeals Office

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California 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 professional or skilled worker. The petitioner is a research and development specialist company. It seeks to employ the beneficiary as an electronics engineer. 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 March 9, 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 electronics engineer. In the instant case, item 14 describes the college degree required as a bachelors or equivalent and specifies that four years of college education are required. The major field of study must be electronics engineering technology. The position also requires two years of experience in the job offered or two years in a related occupation of technology or engineering/optical systems including artificial intelligence, software programming.

As proof of the beneficiary's foreign equivalent bachelor's degree, the petitioner submitted a copy of his foreign diploma from the College of the Israeli Air Industry, several certificates for courses completed, and an evaluation, dated March 26, 1996, from Foundation for International Services, Inc. (FIS).

The evaluation states:

> In summary, it is the judgment of the Foundation that [redacted] has the equivalent of an associate's degree (two years) in electronic engineering from an accredited community college in the United States and has, as a result of his educational background and employment experiences (3 years of experience = 1 year of university-level credit), an educational background the equivalent of an individual with a bachelor's degree in electronics engineering technology 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 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 two years of experience in the job offered or two years of experience in a related occupation.

On appeal, counsel asserts:

> The recruitment stated that the position required a B.S. or equivalent. It did not specify that the job required "a Bachelor or [sic] Science degree or its foreign equivalent," it simply stated Bachelor degree or (equivalent) "equiv." This is widely and generally understood in the industry, throughout the United Stats [sic], that the employer may mean by "equiv" the equivalent in experience, or in combination of education and experience, or equivalent in foreign education. The petition was checked at box e, which is both for a skilled worker (requiring at least two years of specialized training or experience) or for a professional. Mr. Shay Bracha has the equivalent of a bachelor degree based on his training and experience or he may be considered a skilled worker with more than two years of specialized training and/or experience, if the Service so desires.

The AAO cannot conclude that the beneficiary has a foreign equivalent degree. 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 two-year associate degree from an accredited community college in the United States. The beneficiary also has additional certificates towards the study of electronics engineering technology. However, in this case, the labor certification clearly indicates that the equivalent of a U.S. bachelor's degree must be a foreign equivalent degree, not a combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a U.S. baccalaureate degree. A U.S. baccalaureate degree is generally found to require four years of education. *Matter of Shah,* 17 I&N Dec. 244 (Reg. Comm. 1977), and, as stated above, four years are required on the labor certification.

Furthermore, the evaluation in the record 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. The beneficiary was required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the Form ETA 750 was certified by the Department of Labor.

As stated in 8 C.F.R. § 204.5(l)(3)(ii)(B), to qualify as a skilled worker or professional, the petitioner must show that the beneficiary has the requisite education, training, and experience as stated on the Form ETA-750 which, in this case, includes a four-year bachelor's degree in electronics engineering technology, or an equivalent foreign degree.

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 the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as 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 not sustained that burden.

ORDER: The appeal is dismissed.