U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: WAC 03 004 53489 Office: CALIFORNIA SERVICE CENTER Date: SEP 27 2004

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:

[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

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identifying data deleted to prevent clearly unwarranted invasion of personal privacy

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner is an accounting and financial services firm. It seeks to employ the beneficiary permanently in the United States as a tax auditor. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanies the petition. The director determined that the petitioner had not established that the beneficiary has the college degree required by the preference classification for which the petitioner applied and denied the position accordingly.

On appeal, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for granting preference classification to qualified immigrants who hold baccalaureate degrees and 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 granting 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 nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(l)(2) states, in pertinent part:

"*Professional* means a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states, in pertinent part:

> *Professionals*. 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.

If the petition is for a professional pursuant to 8 C.F.R.§204.5(l), then, the petitioner must demonstrate that the beneficiary received a United States baccalaureate degree or an equivalent foreign degree prior to the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. Here, the Form ETA 750 was accepted for processing on October 1, 1997. The Form ETA 750 states that the proffered position requires a "B.A. or equivalent" in accounting and four years experience in the proffered position or four years experience in the related position of accountant.

With the petition, counsel submitted (1) a copy and certified translation of the beneficiary's March 1984 bachelor's degree in economics from the National University of Iran (2) a copy and certified translation of the beneficiary's June 22, 1998 bachelor of science degree in business studies and economics, with a major in

business studies from Uppsala Universitet in Sweden, and (3) an educational evaluation, dated September 18, 2002, stating that the beneficiary's Iranian degree is the equivalent of a four-year bachelor's degree in economics awarded by a U.S. college or university. Counsel also submitted evidence of the beneficiary's relevant work experience.

On April 3, 2003, the California Service Center requested, *inter alia*, additional evidence pertinent to the beneficiary's education. In response, counsel submitted copies of the documents previously submitted. The director determined that the evidence submitted did not establish that the beneficiary has a United States baccalaureate degree or an equivalent foreign degree, and, on June 16, 2003, denied the petition.

On appeal, counsel asserts that the beneficiary meets the requirements stated on the Form ETA 750. As evidence of that assertion, counsel submits another evaluation of the beneficiary's credentials. The new evaluation, dated June 19, 2003, states that the petitioner's education, coupled with his employment experience, is the equivalent of a bachelor's degree in accounting from a U.S. college or university plus four years of employment experience.

The Form ETA states that the proffered position requires a bachelor's degree or equivalent in accounting. The evidence submitted indicates that the petitioner's foreign degree is equivalent to a U.S. bachelor's degree in economics, not a bachelor's degree in accounting.

The evaluation dated June 19, 2003 indicates that the beneficiary's education and his experience, taken together, are equivalent to a bachelor's degree in accounting plus the requisite experience. The regulations pertinent to nonimmigrant petitions explicitly permit the substitution of experience for education and a degree. The laws and regulations applicable to the visa category in the instant case sanction no such substitution of experience for education and a degree.

The petitioner has not demonstrated that the beneficiary has either a U.S. bachelor's degree in accounting or an equivalent foreign degree. Therefore, 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 met that burden.

ORDER: The appeal is dismissed.