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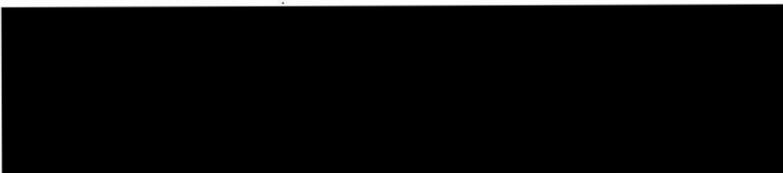
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FILE: [REDACTED] Office: CALIFORNIA SERVICE CENTER Date: **MAR 15 2007**
WAC-05-009-52539

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:



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, Chief
Administrative Appeals Office

DISCUSSION: The preference 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 is an importer and wholesaler. It seeks to employ the beneficiary permanently in the United States as an export manager (purchasing manager). As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL). The director determined that the petitioner did not present evidence that the beneficiary possessed the requisite U.S. Bachelor degree or its foreign degree equivalent, and therefore, he was ineligible for the classification sought. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's July 13, 2005 denial, the single issue in this case is whether or not the petitioner has demonstrated that the beneficiary possessed the requisite bachelor's degree or its foreign equivalent for the proffered position.

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 nature, for which qualified workers are not available in the United States. Section 203(b)(3)(A)(ii) also provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions.

The petitioner must demonstrate that, on the priority date, the beneficiary had the qualifications stated on its Form ETA 750 Application for Alien Employment Certification as certified by the U.S. Department of Labor and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The instant petition is for a substituted beneficiary.¹ Here, the original Form ETA 750 was accepted on February 15, 1991.

The AAO takes a *de novo* look at issues raised in the denial of this petition. *See Dor v. INS*, 891 F.2d 997, 1002 n. 9 (2d Cir. 1989)(noting that the AAO reviews appeals on a *de novo* basis). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal². The relevant evidence in the record includes the beneficiary's Graduation Certificate and transcripts from The Army Academy in Taiwan, Employment Certificates from Swinda International Co., Ltd. and Ta Tung Co., Ltd. in Taiwan, Educational Evaluation Report from Ripley International, and Bachelor of Business Administration

¹ An I-140 petition for a substituted beneficiary retains the same priority date as the original ETA 750. Memorandum from Luis G. Crocetti, Associate Commissioner, Immigration and Naturalization Service, to Regional Directors, *et al.*, *Substitution of Labor Certification Beneficiaries*, at 3, http://ows.doleta.gov/dmstree/fm/fm96/fm_28-96a.pdf (March 7, 1996).

² The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

degree and transcripts from Yuin University in California. The record does not contain any other evidence relevant to the beneficiary's education qualifications.

On appeal, counsel asserts that the submitted evidence establishes the beneficiary's baccalaureate degree, educational background, and work experience and these documents suffice for confirmation that the beneficiary has a baccalaureate degree or its equivalent.

To determine whether a beneficiary is eligible for an employment based immigrant visa, Citizenship and Immigration Services (CIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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).

In the instant case, 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 export manager (purchasing manager). In the instant case, item 14 describes the requirements of the proffered position as follows:

- 14. Education
 - Grade School
 - High School
 - College 4
 - College Degree Required Bachelor
 - Major Field of Study General

The applicant must also have three years of experience in the job offered, the duties of which are delineated at Item 13 of the Form ETA 750A and since this is a public record, will not be recited in this decision. Item 15 of Form ETA 750A states other special requirements as follows: "1. Must have electric engineering background to examine and inspect electric products. 2. Must be able to communicate with Chinese (Mandarin) language since 100% of our products are from Chinese-speaking areas." Item 17 also indicates that the beneficiary will supervise two employees.

The beneficiary set forth his credentials on Form ETA-750B. On Part 11, eliciting information of the names and addresses of schools, college and universities attended (including trade or vocational training facilities), he indicated that he attended The Army Academy in Kaoshiong, Taiwan in the field of "General" from February 1970 through February 1972, culminating in the receipt of a "Certificate." He provides no further information concerning his educational background on this form, which is signed by the beneficiary under a declaration under penalty of perjury that the information was true and correct. In corroboration of the Form ETA-750B, the petitioner provided the beneficiary's Graduation Certificate and transcripts from The Army Academy which show that the beneficiary studied for two (2) years at The Army Academy from February 23, 1970 to February 21, 1972.

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

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. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

While no degree is required for the skilled worker classification, the regulation at 8 C.F.R. § 204.5(l)(3)(B) provides that a petition for an alien in this classification must be accompanied by evidence that the beneficiary "meets the education, training or experience, and any other requirements of the individual labor certification."

A bachelor degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). If supported by a proper credentials evaluation, a four-year baccalaureate degree from Taiwan can reasonably be considered to be a "foreign equivalent degree" to a United States bachelor's degree. Here, the record reflects that the beneficiary's formal education consists of a two-year curriculum.

A credential evaluation drafted by [REDACTED] of [REDACTED] International on September 28, 2004 was also submitted and stated the following in pertinent part:

[The beneficiary's studies at The Army Academy in Taiwan] are equivalent in level and purposes in excess of those requirements in the United States of an Associate degree from an accredited junior college or the equivalent of two years of study in an accredited four year college or university.

From Jan. 1993 through March 2000, [the beneficiary] has been employed as Business Manger at [REDACTED]. From April 2000 to present, [the beneficiary] has been working as Business Manager at [REDACTED] Tainan, Taiwan. According to [the beneficiary]'s employment records, [the beneficiary] has in excess of eleven years professional working experience in Business Management.

According to the United States Immigration and Naturalization rule of three to one (three years of professional experience is the equivalent of one year of higher education), [the beneficiary] has exceeded the equivalent of a bachelor's degree in Business Management.

In conclusion, [the beneficiary] has exceeded the minimum requirements of a bachelor's degree from any United States higher education institution in the opinion of the undersigned.

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); *Matter of Sea, Inc.*, 19 I&N Dec. 817 (Comm. 1988).

First of all, the evaluation report does not indicate any qualifications for the evaluator to provide an educational evaluation in the instant case. 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. See 8 CFR § 214.2(h)(4)(iii)(D)(5). The beneficiary was required to have a bachelor's degree on the Form ETA 750, not a combination of an associate's degree and work experience. 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 must be affirmed.

In response to the director's notice of intent to deny (NOID) dated May 13, 2005, the petitioner submitted the beneficiary's Bachelor of Business Administration degree and transcripts from Yuin University in California. These documents show that the beneficiary enrolled in a bachelor of business administration program at Yuin University in Compton, California on September 6, 1999 and graduated with Bachelor of Business Administration degree on December 14, 2002. 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, which as noted above, is February 15, 1991. See *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The beneficiary's bachelor degree conferred on December 14, 2002 cannot establish that the beneficiary possessed the required bachelor degree for the proffered position prior to the priority date of February 15, 1991 in the instant case. Therefore, the petitioner failed to demonstrate the beneficiary's qualifications prior to the priority date.

The AAO concurs with the director's findings that the petitioner did not establish that the beneficiary possessed the requisite educational requirement for the proffered position prior to the priority date. Counsel's assertions on appeal cannot overcome the ground for denying the petition.

The AAO thus affirms the director's decision that the preponderance of the evidence does not demonstrate that the beneficiary acquired a U.S. Bachelor's degree or foreign equivalent from the evidence submitted into this record of proceeding and thus the petitioner has not demonstrated that he is qualified for the proffered position.

ORDER: The appeal is dismissed.