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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

[redacted]

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DATE: APR 25 2011 Office: NEBRASKA SERVICE CENTER FILE: [redacted]

LIN 06 155 54149

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:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching your decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center. The Administrative Appeals Office (AAO) dismissed a subsequent appeal. The petitioner filed a motion to reopen and reconsider. The AAO approved the motion and reaffirmed the previous dismissal of the appeal. The matter is now before the AAO on a second motion to reopen and reconsider. The AAO will affirm the previous decision of the director and the dismissal of the appeal. The petition remains denied.

The petitioner is an importer and retailer of jewelry, watches and gift items. It sought to employ the beneficiary permanently in the United States as a manager (imports).[1] As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition.

The director denied the petition on March 21, 2007, concluding that the petitioner had failed to establish that the beneficiary satisfied that the minimum level of education required by the terms of the Form ETA 750. On December 9, 2009, the AAO dismissed the appeal[2] and affirmed the director's denial, determining that the petitioner had failed to demonstrate that the beneficiary qualified for either a professional or skilled worker visa classification. The AAO additionally found that the petitioner had failed to establish that the beneficiary's employment experience satisfied the terms of other special requirements set forth on Item 15 of the Form ETA 750.[3]

On January 11, 2010, the petitioner, through counsel, filed a motion styled as a motion for reconsideration and to reopen. On August 4, 2010, the AAO sent the petitioner a NOID, which outlined a number of documents with the beneficiary's name, which appeared to have been altered. The AAO noted in its December 3, 2010 decision:

> In response, the petitioner submitted an affidavit, dated August 30, 2010, from the beneficiary. The beneficiary readily admits to having these false educational documents prepared in order to use them to gain employment in Saudi Arabia for a job that required an older applicant. However, the beneficiary denies having submitted them in support of this or any U.S. immigration petition or to seek any immigration

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[1] 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) of the Act, 8 U.S.C. § 1153(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.

[2] The procedural history of this case is documented in the record and is incorporated herein. Further references to the procedural history will only be made as necessary.

[3] The AAO conducts appellate review on a *de novo* basis. The AAO's *de novo* authority is well recognized by the federal courts. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

benefit.[4] The beneficiary states that they were taken from his apartment by an Immigration and Customs Enforcement Officer when he was detained as a result of a workplace raid. He adds that he regrets his poor judgment in securing these documents and claims that he never used them to apply for the job in Saudi Arabia or in connection with any U.S. immigration application.[5] The beneficiary also states that two of these documents consisting of certificates from the Sind Board Of Education relevant to instruction in quantity surveying and highway material testing were authentic, but were omitted from Part B of the ETA 750 because they were not relevant to the position offered by the petitioner.

In addition to this affidavit, the petitioner submits affidavits from various individuals affirming the beneficiary's good character, as well as what purports to be the beneficiary's original diploma from the University of Karachi delineating his 1988 Bachelor of Commerce degree. The petitioner also provides a copy of an e-mail from the beneficiary requesting someone to seek verification of academic documents from Karachi University. He has subsequently submitted what appear to be certified copies of his educational documents from the University of Karachi including his Bachelor of Commerce degree and a certified copy of his Marks Certificate showing that he passed a previous examination in political science held in July 1989.

While the AAO accepts the beneficiary's explanation of the altered documents found in this file, given the beneficiary's admission that he has previously procured and/or prepared and possessed fraudulent educational credentials, his submission of his diploma and Marks Certificate from the University of Karachi on appeal is not sufficiently convincing to consider as the record stands. To accept their authenticity, at a minimum, we would require that such documents be sent directly, under seal, from the University to this office. Notwithstanding this observation, and even assuming that his credentials are genuine, for the reasons explained below, the AAO concludes that the petitioner has not established that the beneficiary possesses a U.S. Bachelor

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[4] 18 U.S.C. §§ 1546(a) and (b) provide for a wide range of sentencing from 5 years and up for crimes related to the fraud and misuse of visas, permits, and other documents.

[5] While from the record, it does not appear that the beneficiary submitted these documents in connection with the present application, as the full surname varies on the fraudulent documents, it is unclear whether he submitted documents with another application based on an alternate name variant. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Matter of Ho*, 19 I&N Dec. 582, 591 (BIA 1988). Counsel concedes on appeal that the petitioner acknowledges the presence of the beneficiary's fraudulent documents cast doubt on the legitimacy of his educational credentials submitted in support of this petition.

of Arts or Bachelor of Science in Business/Commerce or a foreign equivalent degree, as required by the terms of the labor certification.

Counsel has filed a Form I-290B, Notice of Appeal or Motion on December 22, 2010. It is designated as an appeal. However, there is no appeal available on the AAO's decision on motion. A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). The regulation at 8 C.F.R. § 103.5(a)(3) provides that a motion to reconsider must offer the reasons for reconsideration and be supported by pertinent legal authority showing that the decision was based on an incorrect application of law or U.S. Citizenship and Immigration Services (USCIS) policy. It must also demonstrate that the decision was incorrect based on the evidence contained in the record at the time of the initial decision. The AAO will accept this filing as a motion to reopen/reconsider, however, for the reasons set forth below, the AAO does not find that the decision to dismiss the appeal should be changed.

To be eligible for approval, a beneficiary must have all the education, training, and experience specified on the labor certification as of the petition's priority date. *See Matter of Wing's Tea House*, 16 I&N 158 (Act. Reg. Comm. 1977). Here, the Form ETA 750 was accepted for processing on April 30, 2001, which establishes the priority date.[6]

Regarding the minimum level of education and employment experience required for the proffered position in this matter, Part A of the labor certification reflects the following requirements:

Block 14:

Education (number of years)

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[6] If the petition is approved, the priority date is also used in conjunction with the Visa Bulletin issued by the Department of State to determine when a beneficiary can apply for adjustment of status or for an immigrant visa abroad. Thus, the importance of reviewing the *bona fides* of a job opportunity as of the priority date is clear. Further, it is noted that an affidavit submitted with the petitioner's first motion from the petitioner's owner states that he met the beneficiary in 1993 in Pakistan. A relationship invalidating a *bona fide* job offer may arise where the beneficiary is related to the petitioner by "blood" or it may "be financial, by marriage, or through friendship." *See Matter of Sunmart 374*, 2000-INA-93 (BALCA May 15, 2000). Additionally, the record reflects that the petitioner's address listed on its 2001 tax returns matches the beneficiary's home address listed on various documents in the record. The beneficiary's address listed on Form ETA 750 matches the address found in the petitioner's articles of incorporation. The beneficiary's W-2 income for 2002 and 2003 matches the amount of officer compensation stated on the petitioner's tax returns for these years. Although not raised by the director, these factors call into question the true nature of the beneficiary's role with the petitioner, the *bona fides* of the job offer and the veracity of information contained within the filing. This issue must be addressed in any further filings.

Grade school	
High school	
College	
College Degree Required	B.A. or B.S.
Major Field of Study	Business/Commerce

Experience:

Job Offered	2 (yrs.)
(or)	
Related Occupation	0 (yrs.) Managerial or sales executive position

Block 15:
Other Special Requirements

Positive references with respect to integrity and bank import documents & cash handling

As set forth above, the proffered position requires a Bachelor of Arts or Bachelor of Science in Business or Commerce degree, along with two years of experience in the job offered of imports manager or in a managerial or sales executive position.

Counsel reiterates the same contentions as previously asserted in the initial appeal. Counsel also has submitted a supplemental brief, dated April 13, 2011, with copies of attachments of two newspaper advertisements from the *Philadelphia Inquirer*, a copy of a notice of job posting and a copy of a June 10, 2003 letter from Mohamed Nasim, the petitioner's president. These documents were already submitted to the underlying record and considered in the AAO's dismissal of the appeal on December 9, 2009. Counsel maintains that the beneficiary qualifies in the professional visa classification because the petitioner did not complete the sections of Item 14 of Part A of the ETA 750 related to number of years of college and therefore intended to accept any bachelor's degree in business administration or commerce regardless of the years of college study required to obtain the degree. Counsel claims that the beneficiary's two-year Bachelor of Commerce degree from Pakistan satisfies this requirement. Alternatively, counsel asserts that the beneficiary qualifies for visa classification as a skilled worker because the minimum requirements are two years of training or experience.

Counsel's assertions are not persuasive. As noted in the AAO's previous decisions, although DOL certifies the terms set forth on the labor certification, it is the responsibility of the U.S. Citizenship and Immigration Services (USCIS) to determine if the visa preference petition qualifies for approval and if the alien beneficiary is eligible for the classification sought. Regarding qualification in the professional visa category, 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.

The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes. The regulatory history affirms this position where the Service specifically noted that both the Act and the legislative history indicate that an alien must have at least a bachelor's degree: "[B]oth the Act and its legislative history make clear that, in order to qualify as a professional under the third classification or to have experience equating to an advanced degree under the second, *an alien must have at least a bachelor's degree.*" 56 Fed. Reg. 60897, 60900 (November 29, 1991)(emphasis added). There is no indication that a foreign equivalent degree to a U.S. bachelor's degree was contemplated to be a two-year foreign bachelor's degree as this beneficiary possesses, or anything less than a foreign equivalent degree to a U.S. bachelor's degree. A two or three year foreign bachelor's degree will not be considered to be the "foreign equivalent degree" to a U.S. baccalaureate degree, which is generally found to require four years of eduction. *See Matter of Shah*, 17 I&N Dec. 244 (Reg. Comm. 1977). Further, where the analysis of the beneficiary's credentials relies on work experience alone or a combination of multiple lesser degrees and/or work experience, the result does not represent a single degree from a college or university. This beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" from a college or university in the required field of study and does not qualify as a professional under section 203(b)(3)(A)(ii) of the Act.

Additionally, as stated previously, we are not convinced that the beneficiary qualifies for visa classification as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Act. First, it is noted that a designation of "B.S. or foreign equivalent" relates solely to an alien's educational background, not to a combination of education and work experience. *See Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005 (D. Or. Nov. 30, 2006).[7] In the instant case, unlike the labor certification in

[7]The court in *Snapnames.com, Inc.* recognized that even though the labor certification may be prepared with the alien in mind, USCIS has an independent role in determining whether the alien meets the labor certification requirements. *Id.* at *7. Thus, the court concluded that where the plain language of those requirements does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written." The court also determined that the word 'equivalent' in the employer's educational requirements was ambiguous and that in the context of skilled worker petitions (where there is no statutory educational requirement), deference must be given to the employer's intent. *Snapnames.com, Inc.* at *14. It is noted that the petitioner failed to designate "equivalent" in the

Snapnames.com, Inc., or *Grace Korean United Methodist Church v. Michael Chertoff*, 437 F. Supp. 2d 1174 (D. Or. 2005) as cited by counsel, the petitioner did not use the phrase "or equivalent" to designate an educational equivalence on the Form ETA 750 and did not specify that a two-year foreign bachelor's degree would be acceptable in lieu of a U.S. bachelor's degree. Indeed, the petitioner failed to specify any specific equivalency on the ETA 750. *See also Maramjaya v. USCIS*, Civ. Act No. 06-2158 (RCL) (D.C. Cir. March 26, 2008)(upholding an interpretation that a "bachelor's or equivalent" requirement necessitated a single four-year degree).

In this matter, the Form ETA 750 does not specify an equivalency to the requirement of a bachelor of science or bachelor of arts in business or commerce. As noted in the prior decision, a two-year degree in the United States is commonly awarded as an Associate's degree. The copies of the notice of posting and newspaper advertisements related to the ETA 750's educational requirements also failed to advise DOL or any otherwise qualified U.S. workers that the educational requirements might be met through a quantitatively lesser degree or any defined equivalency to include education and work experience.[8] Although the newspaper advertisements stated that the applicant must have two years of experience and a "BS/BA or equivalent" in a business related field, they failed to define any equivalency and failed to indicate that a two-year foreign bachelor's degree would be considered equivalent to a U.S. baccalaureate. The language in the advertisements also failed to match the stated terms of the labor certification of a B.A. or B.S. in Business/Commerce. USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS 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 petitioner failed to state any defined equivalency on Form ETA 750, USCIS is not permitted to read the terms of the labor certification differently.

In order for a beneficiary to be classified as a skilled worker, a petitioner must establish that the beneficiary meets the minimum job requirements of the individual labor certification as set out on the relevant ETA 750. 8 C.F.R. § 204.5(l)(3)(ii). This regulation requires in pertinent part:

> (B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

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certified labor certification's educational requirements or describe any kind of equivalency within the labor certification.

[8] As indicated in the resume submitted in response to the petitioner's advertisements, the U.S. worker possessed a B.S. in Finance from New Jersey City University. There is no indication that this was anything less than a four-year U.S. bachelor's degree.

This beneficiary does not meet the minimum job requirements of the ETA 750 as the labor certification requires a completed bachelor's degree with no stated equivalency allowed. The petitioner has not demonstrated that the beneficiary has the required bachelor's degree to meet the terms of the certified labor certification.[9]

In this case, whether considered as a professional or skilled worker, the beneficiary does not possess a U.S. bachelor of arts or bachelor of science in business/commerce or a foreign equivalent degree to meet the terms of the certified labor certification. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The petitioner's second motion is granted. The prior decisions of the AAO, dated December 9, 2009 and December 3, 2010 are affirmed. The petition remains denied.

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[9] As noted in the prior AAO decision, the beneficiary has a Bachelor of Commerce from Pakistan evaluated as the equivalent of two years of education. An evaluation determined that he had the "equivalent" of a bachelor's degree based on a combination of education and experience. As noted above and in the prior AAO decisions, the labor certification did not set forth any defined equivalency to allow "an individual to qualify through a combination of education and experience." We additionally note that despite the beneficiary's submission of a partial completion of a Master's degree [although in an unrelated field] the evaluation did not consider such education or assign any academic value to that program of study. As noted in the AAO's NOID, the record contained variations of this document:

> A copy of a marks certificate from the University of Karachi in the beneficiary's name, on number 04721, dated 7th October, 1989 denoting that he passed a previous examination in political science held July 1989. The certificate is identified as "M.A. Previous Examination 1989." A *second* copy of this 1989 marks certificate, identical in all respects also appears in the file, except it is *undated.* A *third* copy also is in the record which shows the beneficiary's master's degree studies from the Univeristy of Karachi on the same number 04721, that is *undated*, and indicates all the same information including the examination scores, except that the marks certificate is identified as "M.A. Previous Examination 1985," which would have pre-dated the beneficiary's claimed baccalaureate studies

The petitioner submitted a certified copy in response to the NOID.