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U.S. Citizenship
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Services



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FILE: [Redacted]
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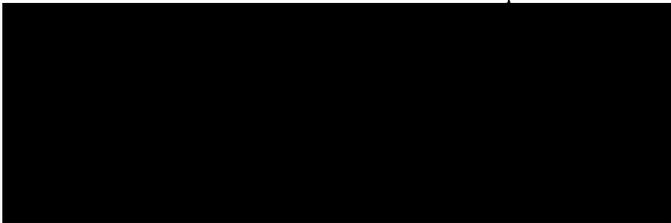
Office: VERMONT SERVICE CENTER

Date: JUN 09 2005

IN RE: Petitioner: [Redacted]
Beneficiary [Redacted]

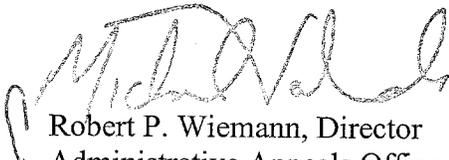
PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

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, Director
Administrative Appeals Office

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

The petitioner is a dental services company. It seeks to employ the beneficiary permanently in the United States as a microbiologist. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor. The director determined that petitioner had not established that the beneficiary has the requisite education and experience as stated on the labor certification petition beginning on the priority date of the visa petition. The director denied the petition accordingly.

On appeal, the counsel submits a brief and additional evidence.

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.

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

(A) General. Any requirements of training or experience for skilled workers, professionals, or other workers must be supported by letters from trainers or employers giving the name, address, and title of the trainer or employer, and a description of the training received or the experience of the alien.

(C) 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 a member of the professions, the petitioner must submit evidence showing that the minimum of a baccalaureate degree is required for entry into the occupation.

The petitioner must also 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).

Here, the Form ETA 750 was accepted on April 30, 2001. The proffered wage as stated on the Form ETA 750 is \$38,730.00 per year. The Form ETA 750 states that the position requires two years experience, and, a Bachelors of Science degree, with the major field of study in microbiology.

With the petition, counsel submitted the following documents: the original Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor, a copy of petitioner's job offer letter, copies of documentation concerning the beneficiary's qualifications and documentation.

Because the Director determined the evidence submitted was insufficient to show that the beneficiary had the Bachelors of Science degree, the Vermont Service Center requested evidence pertinent to that issue.

Consistent with the requirements of 8 C.F.R. 204.5 § (I)(3)(ii), the Service Center specifically requested:

“A review of the education evaluation shows the beneficiary possess an associate degree and fifty-one credits.”

“Submit evidence to establish that the beneficiary possessed a baccalaureate degree as of April 30, 2001, the date of filing.”

“Evidence relating to qualifying experience or training shall be in the form of letter(s) from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received. If such evidence is unavailable, other documentation relating to the alien’s experience will be considered.”

In response to the above Request for Evidence, counsel submitted the following:

- An equivalency evaluation determination stating that the beneficiary’s formal education is equivalent to three years of undergraduate study in microbiology from a regionally accredited educational institution in the United States.
- Letters confirming the beneficiary’s experience.

The director denied the petition on November 18, 2003, finding that the evidence submitted did not demonstrate that the beneficiary “... possess [ed] all of the qualifications specified by the petitioner on the Job Offer for Alien Employment as of the filing date of the petition.”

On appeal, counsel submits a brief and asserts alternately, that based upon the two educational equivalency determinations submitted¹, that the beneficiary possesses the necessary qualifications based upon education and experience, or, upon education alone.

We note that the subject ETA-750 requires, under the education block, a Bachelor's degree in Science with the major field of study in microbiology. Even if the AAO were to accept the petitioner's assertion (which it does not) that the beneficiary's combination of education and experience is the equivalent of a bachelor's science degree in microbiology, the ETA-750 still contains the requirement of a college degree. This requirement is consistent with *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977), where the regional commissioner found that a bachelor degree is generally found to require four years of education. Therefore, among the other requirements on the ETA-750, there is a specific requirement that the beneficiary must have four years of college education. There is no statement on the ETA-750 that this specific requirement can be met through any combination of education and experience. Nor can CIS add such language to the ETA-750.

To determine whether a beneficiary is eligible for a third preference immigrant visa, Citizenship and Immigration Services (CIS), formerly the Service or INS must ascertain whether the alien is, in fact, qualified for the certified job. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific degree. 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.

¹ The two educational equivalency determinations are not compatible, one stressing education and experience, the other education alone.

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).

The evidence submitted does not demonstrate credibly that the beneficiary had the education and necessary Bachelors of Science degree, with the major field of study in microbiology. Therefore, the petitioner has not established that the beneficiary is eligible for the proffered position.

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.