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U.S. Citizenship and Immigration Services

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[redacted]

FILE: [redacted] Office: CALIFORNIA SERVICE CENTER Date: OCT 01 2008
WAC-02-175-52499

IN RE: Petitioner:
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:

[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, Chief
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center. The appeal was dismissed by the Administrative Appeals Office (AAO). A subsequent motion to reopen was granted and the previous decision of the AAO was affirmed and the petition remained denied. The matter is now before the AAO on a second motion to reopen and reconsider. The motion will be granted, the previous decisions of the AAO will be affirmed, and the petition will remain denied.

The petitioner is a telecommunications installation and operations firm. It seeks to employ the beneficiary permanently in the United States as an accountant (accounting chief). 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). On January 2, 2003, the director denied the petition on the basis that the petitioner failed to establish its continuing ability to pay the proffered wage beginning on the priority date of the visa petition. The AAO dismissed the subsequent appeal because the petitioner failed to establish its continuing ability to pay the proffered wage as of the priority date in the instant case and the beneficiary does not meet the educational requirements set forth on the Form ETA 750. On the subsequent motion to reopen, the petitioner submitted new evidence. The AAO granted the motion to reopen and found that the totality of circumstance established that the petitioner had the continuing ability to pay the proffered wage. However, the AAO affirmed the decisions of the director and the AAO and denied the petition because the motion to reopen failed to demonstrate that the beneficiary possessed the required education for the proffered position prior to the priority date.

On motion, counsel asserts that the beneficiary holds a bachelor's degree and master's degree from the University of Dhaka, Bangladesh, certificates of passing examinations and completing courses and training and extensive years of experience and that all of these can be evaluated as the equivalent to a U.S. master's degree. Counsel submits the following as new facts and evidence to support his assertions: a brief, the beneficiary's bachelor of social science degree, master of social science degree, and transcripts from the University of Dhaka, certificate of completion of a 2-year minor in accounting at the University of Dhaka, a letter from the chairman of the Department of Accounting at the University of Dhaka, certificates of passing examinations from the Institute of Bankers, Bangladesh, certificates of completion of training from Sonali Bank Staff College and Sonali Bank Training Institute, an experience letter dated September 12, 1997 from [redacted], Deputy Managing Director of Sonali Bank in Dhaka, Bangladesh (Sonali Bank September 12, 1997 letter), and an equivalency report dated May 25, 2006 from the International Education Research Foundation, Inc. (IERF May 25, 2006 evaluation).

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

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 accounting chief. In the instant case, item 14 describes the requirements of the proffered position as follows:

14.	EDUCATIN	
	Grade School	
	High School	
	College	5 [years]
	College Degree Required	Master's
	Major Field of Study	Banking or Accounting
	EXPERIENCE	
	Job Offered	3 [years] or
	Related Occupation	3 [years]
	Related Occupation	Manager of Financial Institution

The duties are delineated at Item 13 of the Form ETA 750A and since this is a public record, need not be recited in this decision. Item 15 of Form ETA 750A does not reflect any special requirements.

The original Form ETA 750 was accepted on January 13, 1998 and certified on October 3, 2001. The ETA 750 in the instant case was filed and certified for the position of accounting chief. DOL assigned the occupational code of 160.162-018, accountant, to the proffered position. DOL's occupational codes are assigned based on normalized occupational standards. According to DOL's public online database at http://online.onetcenter.org/crosswalk/DOT?s=160.162-018&g=Go (accessed September 16, 2008) and its position requirements most analogous to an accounting chief position, the position falls within Job Zone Four requiring "considerable preparation." According to DOL, two to four years of work-related skill, knowledge, or experience is needed for such an occupation. DOL assigns a standard vocational preparation (SVP) range of 7-8 to the occupation, which means "[m]ost of these occupations require a four-year bachelor's degree, but some do not." *See* http://online.onetcenter.org/link/summary/13-2011.00#JobZone (accessed September 16, 2008). Additionally, DOL states the following concerning the training and overall experience required for these occupations:

> A minimum of two to four years of work-related skill, knowledge, or experience is needed for these occupations. For example, an accountant must complete four years of college and work for several years in accounting to be considered qualified. Employees in these occupations usually need several years of work-related experience, on-the-job training, and/or vocational training.

See id.

Therefore, based on DOL's normalized occupational requirements, an accountant position could be properly analyzed as a professional or as a skilled worker since the normal occupational requirements do not always require a bachelor's degree but a minimum of two to four years of work-related experience.[1] In this case, although the petitioner checked box e in Part 2 of the I-140 form, which is for either a professional or a skilled worker, the petitioner requires a master's degree in banking or accounting and three years of experience in the job offered or a related occupation. Further, the Form ETA 750 indicates that the beneficiary in the proffered position will supervise 5-6 employees and be responsible for all accounting for the company. It is a supervisory and managerial position. In addition, the Form ETA 750 does not indicate that the employer would accept any alternate requirements in lieu of the master's degree requirement. Because of these requirements, the position may not be properly analyzed as a skilled worker which only requires two years of experience. Therefore, the instant petition will be analyzed under the professional category.

For the professional 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 regulations use 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 evidence in the record shows that the beneficiary was awarded a three-year bachelor of social science degree in sociology from the University of Dhaka in Bangladesh in 1982 and a one-year master of social science degree in sociology from the same university in 1984. A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the beneficiary's master of social science degree in sociology from the University of Dhaka may be evaluated as a foreign equivalent degree to a U.S. bachelor's degree in sociology, but not a U.S. master's degree in banking or accounting. Moreover, to determine whether a beneficiary is eligible for a preference immigrant visa, CIS 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. Although counsel submits a certificate from the Department of Accounting at the

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[1] A professional occupation is statutorily defined at Section 101(a)(32) of the Act as including but not limited to "architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." It is noted that accountant positions are not included in this section.

University of Dhaka and a letter from the chairman of the department certifying that the beneficiary completed his minor courses in accounting during the two years and passed the subsidiary final examination in 1982, a two-year minor in accounting is not equivalent to a U.S. master's degree majoring in banking or accounting.

The beneficiary also holds certificates of passing the Banking Diploma Examination Parts I and II from the Institute of Bankers, Bangladesh, and certificates of completion of training courses from the Sonali Bank Staff College and the Sonali Bank Training Institute. However, there is no evidence in the record of proceeding that any of the institutions provide college level education in banking or accounting, and is authorized to grant a bachelor's degree or master's degree. Nor is there evidence showing that any of these certificates is a single college/university degree. Therefore, the beneficiary's certificates from the Institute of Bankers, Sonali Bank Staff College and Sonali Bank Training Institute cannot be considered as a postgraduate diploma from an accredited university or institution. The record does not contain any evidence that any of the beneficiary's certificates submitted in the record are postgraduate diplomas from an accredited university or institution. Therefore, the petitioner failed to demonstrate that the beneficiary possessed a single U.S. master's degree or a foreign equivalent degree in banking or accounting as required by the Form ETA 750 in the instant case.

Counsel asserts that the beneficiary possesses the equivalent to a U.S. master's degree in banking or accounting according to a private credential evaluation from IERF. The IERF May 25, 2006 evaluation states that the beneficiary's bachelor's and master's studies are considered equivalent in level and purpose to the Bachelor of Arts in Sociology, awarded by regionally accredited colleges and universities in the United States; and that the beneficiary's studies and passage of the Banking Diploma Examination Parts I and II are considered comparable to completion of a training program in Banking at a private business school in the United States. Therefore, the IERF evaluation combined all of the beneficiary's academic accomplishments to establish equivalency. The IERF May 25, 2006 evaluation does not establish that the beneficiary holds a single four-year U.S. bachelor's degree in banking or accounting.

Therefore, the record does not contain any evidence that the beneficiary holds a single United States baccalaureate degree or a single foreign equivalent degree in banking or accounting to be qualified as a professional for third preference visa category purposes. Because the beneficiary does not have a "United States baccalaureate degree or a foreign equivalent degree" in banking or accounting, the beneficiary does not qualify for preference visa classification under section 203(b)(3)(ii) of the Act. In addition, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B), providing evidentiary requirements for "skilled workers," states the following:

> 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 art least two years of training or experience.

(Emphasis added).

Thus, for petitioners seeking to qualify a beneficiary for the third preference "skilled worker" category, the petitioner must produce evidence that the beneficiary meets the "educational, training or experience, and any other requirements of the individual labor certification." And for the "professional category," the beneficiary must also show evidence of a "United States baccalaureate degree or a foreign equivalent degree." Thus, regardless of the category sought, the beneficiary must have a four year bachelor's degree or its foreign equivalent in banking or accounting, and three years of work experience in the job offered or related occupation as a manager of financial institution. As the beneficiary lacks the degree required by the petitioner on the labor certification, the beneficiary cannot qualify under either the professional or the skilled worker category. Thus, the petitioner failed to demonstrate that the beneficiary is qualified for the proffered professional position.

Counsel also asserts on motion that the beneficiary possessed an equivalency of a U.S. bachelor's degree from both his bachelor's and master's degrees and that those degrees combined with his five years of professional experience are equivalent to a U.S. master's degree. However, the certified form ETA 750 also requires three years of experience in addition to the master's degree. Therefore, to qualify according to counsel's equivalency alternative and the express experiential requirements on the labor certification the beneficiary must have at least eight years of qualifying experience. The record contains an experience letter from Sonali Bank. The Sonali Bank September 12, 1997 letter states in pertinent part that:

> This is my pleasure to certify that [the beneficiary] was employed by Sonali Bank, the largest national bank in Bangladesh, as a senior officer in 1984. The bank records indicate that he served as a bright and motivated executive with the responsibility of supervising different areas of banking. It is evident from the record that his performance, while serving as a Branch Manager in this bank from September 1987 to July 1991, was very good.

This letter verifies the beneficiary's employment with Sonali Bank for only seven years, even including the experience in the positions of a senior officer and branch manager, which is not sufficient for the beneficiary to qualify for the proffered position, either to establish his master's degree equivalency or to demonstrate his requisite three years of experience in the job offered or in a related occupation.

In addition, the regulation at 8 C.F.R. § 204.5(g)(1) states in pertinent part:

> 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.

The Sonali Bank September 12, 1997 letter does not verify the beneficiary's full-time employment, and does not include a specific description of the duties performed by the beneficiary in relevant positions. Therefore, the AAO cannot determine whether the beneficiary's employment experience with Sonali Bank as a senior officer qualifies him to perform the duties set forth at item 13 of the Form ETA 750 for the proffered position or whether the experience can be considered in evaluating his credentials' equivalency to a U.S. master's degree.

Counsel's assertions and new evidence submitted on motion failed to establish the beneficiary's qualifications for the proffered position and thus, cannot overcome the grounds of denial in the AAO's May 2, 2006 decision.

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 motion is granted. The previous decision of the AAO, dated May 2, 2006, is affirmed. The petition remains denied.