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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

B6

DATE: JUN 15 2011 Office: NEBRASKA SERVICE CENTER

FILE:

IN RE: Petitioner:  
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:

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

The petitioner manufactures vitamin and drug products. It seeks to employ the beneficiary permanently in the United States as a quality control and distribution coordinator under the occupational title of "First-Line Supervisors/Managers of Production and Operating Workers." As required by statute, the Form I-140, Immigrant Petition for Alien Worker, is accompanied by a Form ETA 750, Parts A & B, Application for Alien Employment Certification, approved by the United States Department of Labor (USDOL). The director determined that the petitioner failed to demonstrate that the beneficiary met the minimum educational requirement stated on the approved labor certification.

The record shows that the appeal is properly filed, 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.

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.

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). The priority date of the petition is April 27, 2001, which is the date the labor certification was accepted for processing by the USDOL. *See* 8 C.F.R. § 204.5(d).<sup>1</sup> The Form I-140, Immigrant Petition for Alien Worker, was filed on February 21, 2007.

The job qualifications for the certified position of quality control and distribution coordinator are found on Form ETA-750 Part A. Item 13 describes the job duties to be performed as follows:

Position supervises day shift operation, to maximize production efficiency and ensure high quality production standards are met. Training and experience in coordinating production activities, control yields, raw material inventory and controls operating costs. Implement new procedures, as well as oversee the day-to-day warehouse activities including shipping/receiving and forklift operation. Acts as safety coordinator including reviewing all safety and risk policies and procedures. Tracks, schedules and coordinates the necessary maintenance activities associated with production, and the facility maintenance. Responsible for reviewing all orders, job-

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<sup>1</sup> 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.

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The minimum education, training, experience and skills required to perform the duties of the offered position are set forth at Part A of the labor certification which reflects the following requirements:

Block 14:

Education (number of years)	
College	2
College Degree Required	Associate Degree in Business
Major Field of Study	Business or related field
Experience:	
Job Offered	2 years
(or)	
Related Occupation	0 years

Block 15:

Other Special Requirements      Two years experience of progressively responsible full time working in a manufacturing/production distribution environment

To determine whether a beneficiary is eligible for an employment based immigrant visa, United States Citizenship and Immigration Services (USCIS) must examine whether the alien's credentials meet the requirements set forth in the labor certification. In evaluating the beneficiary's qualifications, 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, *Madany 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). According to the plain terms of the labor certification, the applicant must have a two-year associate's degree in business or a related field and two years experience in the job offered.

The beneficiary set forth his credentials on the labor certification and signed his name under a declaration that the contents of the form are true and correct under the penalty of perjury. On the section of the labor certification eliciting information of the beneficiary's education, he represented that he attended courses in Word 2000 and Excel 2000 provided by Comp USA in April 2001. He also represented that he attended [REDACTED] in Mexico from September 1982 to June 1985 and had attained a [REDACTED]. In response to the director's Request for Evidence dated July 3, 2007, counsel submitted a copy of the beneficiary's transcript from the [REDACTED] Technologico issued by the Secretariat for Public Education, Direction General of Education Technological Industrial dated July 13, 1985. The head of the Schooling [REDACTED] and the Director of the Center, Engineer [REDACTED] issued the beneficiary a certificate documenting his completion of high school technological studies in the area of economical administrative sciences for his study during the school terms 1992 to 1993 and 1994 to 1995. Counsel acknowledges that after his credential was translated from this institution, it verifies the beneficiary has earned the

equivalent of a high school diploma and not a bachelor's degree from that organization. Neither counsel nor the beneficiary claims that the beneficiary has earned an associate's degree in business or a related field or that his work experience, high school education, or a combination thereof somehow represents the equivalent to an associate's degree in business or a related field.

On appeal, counsel argues that the USDOL removed the educational requirement from the Form ETA 750 and, thus, the position only requires two years of work experience. In support, counsel submits correspondence between the Employment Development Department (EDD) of the State of California and the petitioner. In a letter dated June 17, 2004 from the Foreign Labor Certification Office of the EDD, the author states that the amount of education, training, and experience in the original version of the labor certification appeared excessive. The original version of the labor certification required three years of work experience, Spanish language skills, a variety of special skills, two years of college, and an associate's degree in business or a related field. In response to the EDD's letter, on July 15, 2004 the petitioner agreed to amend block 14 of the Form ETA 750 to require "two years of experience of progressively responsible full time working in a manufacturing/production distribution environment." The petitioner did not specifically indicate in that correspondence, or in any other correspondence with the EDD or the USDOL, that the educational requirement of an associate's degree and two years of college was being eliminated from block 14 of the Form ETA 750. On August 17, 2006, the USDOL certified the Form ETA 750. Consistent with the petitioner's corrections, the block 14 was changed to require two years of work experience and block 15 was changed to eliminate some of the special requirements. The educational requirement of an associate's degree was not changed by USDOL or the EDD. Although counsel submitted evidence on appeal that its newspaper advertisements for the proffered position omitted the associate's degree requirement, USCIS is prohibited from ignoring a term of the labor certification. *See, e.g., Matter of Silver Dragon Chinese Restaurant*, 19 I&N Dec. at 406. The fact that USDOL did not remove the associate's degree requirement in accordance with the petitioner's vague request to correct block 14 of the Form ETA 750 is not an issue that USCIS may now address. As noted above, the plain terms of the labor certification require a two-year associate's degree in business or a related field. As the beneficiary did not have an associate's degree in any field as of the priority date, he is ineligible for the position, and the petition was appropriately denied. *See Matter of Wing's Tea House*, 16 I&N Dec. 158. 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. *Snapnames.com, Inc. v. Michael Chertoff*, 2006 WL 3491005, \*7 (D. Or. Nov. 30, 2006) (concluding that, where the plain language of the labor certification does not support the petitioner's asserted intent, USCIS "does not err in applying the requirements as written").

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.