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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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ADMINISTRATIVE APPEALS OFFICE  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536

[Redacted]

File: [Redacted] Office: TEXAS SERVICE CENTER

Date: FEB 24 2003

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:

[Redacted]

PUBLIC COPY

INSTRUCTIONS:

This is the decision 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.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. § 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Bureau of Citizenship and Immigration Services (Bureau) where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of \$110 as required under 8 C.F.R. § 103.7.

*Robert P. Wiemann*  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based preference visa petition was denied by the Director, Texas Service Center. The director's decision to deny the petition was affirmed by the Administrative Appeals Office (AAO) on appeal. The matter is now before the AAO on a motion to reopen. The motion will be granted. The previous decision of the AAO will be affirmed and the petition will be denied.

The petitioner is a healthcare agency. It seeks to employ the beneficiary permanently in the United States as a marketing and acquisition representative. As required by statute, the petition is accompanied by an individual labor certification approved by the Department of Labor. The director determined that the petitioner had not established that the beneficiary met the petitioner's qualifications for the position as stated in the labor certification as of the petition's filing date.

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 or seasonal nature, for which qualified workers are not available in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's priority date is March 10, 1997.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of marketing and acquisition representative required a Bachelor of Arts degree with a major field of study in marketing, and three years of experience in the related occupation of financial consultant. The labor certification does not state that the equivalent of a bachelor's degree or any other level of education will satisfy the requirement.

The director denied the petition noting that the petitioner had not established that the beneficiary had the required Bachelor's degree as of the filing date of the petition. The director noted that the university did not award the beneficiary a bachelor's degree until after the director requested evidence of the beneficiary's degree.

On motion, counsel reiterates the argument that the beneficiary completed all coursework necessary for the bachelor's degree in December of 1993, but because he was not able to pay some fees, the degree was not actually conferred until 1999. Counsel further argues that:

[REDACTED] filed the I-140 petition and the 750A with the INS, no diploma was included. On July 14, 1999, INS wrote back requesting proof that [the beneficiary] had a college degree prior to the filing of the 750A. Apparently, the INS never reviewed [the beneficiary's] practical training and H-1B files, all of which contained proof that he earned his college degree from FIU in December 1990. Up to this time, [the beneficiary] had not secured a physical diploma for the reasons previously mentioned. [REDACTED] requested him to obtain a physical diploma from FIU for the INS. (See Exhibit 12). FIU issued that diploma and gave it the date of issuance, August 11, 1999. This is the date it was physically prepared, not the date that [the beneficiary] earned his Bachelor's Degree (December 1990) nor the date that FIU officially accepted the proof (Fall 1993) that he had completed his degree course work in December 1990. The diploma was then submitted to the INS.

Counsel's argument is not persuasive. As noted in the previous decision, the essential focus is the job requirements stated on the labor certification.

To determine whether a beneficiary is eligible for a third preference immigrant visa, the Service must ascertain whether the alien is in fact qualified for the certified job. In evaluating the beneficiary's qualifications, the Service must look to the job offer portion of the labor certification to determine the required qualifications for the position; the Service 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. Cal. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

Despite counsel's arguments, the Service will not accept a degree equivalency when a labor certification plainly and expressly requires a candidate with a specific degree. The fact remains that while the beneficiary may have completed all coursework for his degree in 1993, the degree was not awarded until 1999, after the beneficiary met his financial obligations to the university.

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 sustained that burden.

**ORDER:** The AAO's decision of October 1, 2001 is affirmed. The petition is denied.