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U.S. Department of Homeland Security

Citizenship and Immigration Services

ADMINISTRATIVE APPEALS OFFICE
CIS, AAO, 20 Mass. 3/F
425 I Street N.W.
Washington, D.C. 20536

[redacted]

File: LIN 02 238 51161 Office: Nebraska Service Center Date: MAR 16 2004

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:
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 Citizenship and Immigration Services (CIS) 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, Director
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 is a motel. It seeks to employ the beneficiary permanently in the United States as a controller. As required by statute, a Form ETA 750, Application for Alien Employment Certification, approved by the Department of Labor (DOL), accompanies the petition. The director determined that the beneficiary did not meet the qualifications of the position as stated in the labor certification as of the priority date.

On appeal, counsel states the service center erred in fact and in law in its determination that the beneficiary did not have the equivalent of a bachelor's degree.

With the petition counsel submitted an ETA 750 indicating the proffered position required a bachelor's degree in accounting and auditing, and knowledge of several specific software accounting programs. Counsel also submitted a copy of the beneficiary's certificate of graduation from Sardar Patel University indicating he received a Bachelor of Commerce degree with an optional subject of advanced accounting and auditing, and a statement from Josef Silny of Josef Silny & Associates, Inc. stating that the beneficiary had completed the equivalent of three years of undergraduate study in accounting and auditing at an accredited U.S. institution of higher education.

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.

Furthermore, 8 C.F.R. 204.5(l)(3)(ii) states, 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.

To be eligible for approval, a beneficiary must have all of the training, education, and experience specified on the labor

certification as of the date that the request for labor certification was accepted for processing by DOL. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). The petitioner's priority date in this instance is December 13, 2001.

In a request for evidence (RFE) dated October 14, 2002, the director requested evidence that the beneficiary met the educational requirements of the labor certificate on the priority date. In response, counsel submitted a statement from [redacted] Ph.D., Associate Professor, School of Business Administration, University of Miami representing [redacted] & Associates, Inc. stating that based on the beneficiary's educational achievements and work experience, he had obtained the equivalent of a bachelor's degree leading to a specialization in accounting from a U.S. institution of higher learning.

The director denied the petition, determining that the petitioner had not established that the beneficiary met the education requirements of the labor certification.

On appeal, counsel asserts that DOL had certified that the beneficiary's educational credentials and work experience were the equivalent of a U.S. bachelor's degree and that CIS should have deferred to DOL's determination.

The role of DOL in the immigration process is to certify that there are not enough qualified and available U.S. workers at the time of the application and that employment of the alien will not adversely affect similarly employed U.S. workers. Section 212(a)(5)(A) of the Act, 8 U.S.C. § 1182. *See also* 20 C.F.R. § 656.24. DOL's determination, if any, regarding the alien's qualifications for the job specified on the labor certification is merely advisory, and CIS is not bound by any such determination. *See Matter of Wing's Tea House*, 16 I&N Dec. at 160.

The petitioner in its request for labor certification specifically described the education and experience requirements it sought as a Bachelor's Degree with a major field of study in accounting and auditing. It did not specify that experience or a combination of experience and education could also satisfy the job requirements. According to the petitioner's expert, the beneficiary has the equivalent of three years of undergraduate experience, and does not meet the minimum educational requirements specified by the petitioner in the labor certification.

Additionally, a bachelor degree is generally found to require four (4) years of education. *See Matter of Shah*, 17 I&N Dec. 244, 245 (Comm. 1977). Therefore, the combination of education and experience may not be accepted in lieu of a four-year degree.

Upon review, the petitioner has been unable to present sufficient evidence to overcome the findings of the director in his decision to deny the petition. The petitioner has not established eligibility pursuant to section 203 (b)(3)(A)(i) of the Act and the petition may not be approved.

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.