U.S. Department of Homeland Security
20 Mass, Rm. A3042, 425 I Street, N.W.
Washington, DC 20536

B6

U.S. Citizenship and Immigration Services

[redacted]

FILE: WAC 02 190 50263 Office: CALIFORNIA SERVICE CENTER Date: MAR 29 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for a 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, Director
Administrative Appeals Office

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy
PUBLIC COPY

DISCUSSION: The employment based immigrant visa petition was denied by the Director, California Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary as an employment based immigrant pursuant to section 203(b)(3) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3), as a professional or skilled worker. The petitioner is an interior design and construction firm. It seeks to employ the beneficiary as an architectural drafter. As required by statute, the petition was accompanied by certification from the Department of Labor. The director denied the petition because he determined that the beneficiary's foreign academic education is not the equivalent to a United States bachelor's degree. The director concluded that the petitioner had not established that the beneficiary was eligible for the visa classification sought.

On appeal, the petitioner's counsel asserts that the beneficiary has the necessary credentials to meet the qualifications set forth in the approved labor certification and that CIS should exercise discretion to approve the petition.

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

Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii) also provides employment based visa classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

To be eligible for approval, a beneficiary must have the education and experience specified on the labor certification as of the petition's filing date. The filing date of the petition is the initial receipt in the Department of Labor's employment service system. *Matter of Wing's Tea House,* 16 I&N 158 (Act. Reg. Comm. 1977). In this case, that date is April 24, 2001.

To determine whether a beneficiary is eligible for an employment based immigrant visa as set forth above, the CIS must examine whether the alien's credentials meet the requirements set forth in the labor certification. 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 architectural drafter. In the instant case, only item 14 contains any information. It shows the following requirements:

14.	Education		
	College	4	
	College Degree Required		BACHELOR
	Major Field of Study		Architecture/Drafting

As proof of the beneficiary's bachelor's degree required by the labor certification, the petitioner initially submitted a copy of the beneficiary's graduation certificate indicating that he was admitted to the "Anyang Technical College, Korea in 1991 and graduated in 1995. He pursued a course of study in the architecture department. Accompanying this certificate are two copies of the beneficiary's grade transcripts reflecting his attendance for the first and second semester of 1991 and 1994.

On August 13, 2002, the director requested further evidence supporting the beneficiary's education and training. The director advised the petitioner to submit a copy of the official college or university transcript, including a copy of the degree received.

In response, counsel resubmitted copies of the beneficiary's certificate and grades from Anyang Technical College. Counsel included a "Certificate of Experience" reflecting that the Pomshin Public Management Co. employed the beneficiary as an architectural drafter from May 1991 until February 1995, and subsequently from June 1996 until March 1997. Counsel also submitted a "Certificate of Employment" from the Hyundai Construction Co. indicating that the beneficiary served as an assistant architectural engineer for that firm from March 1995 until May 1996. Another copy of an employment verification document is also contained in the record. It states that the beneficiary had been working for two other Korean construction companies from 1997 until January 2001.

Counsel's response also included a copy of the beneficiary's resume summarizing his employment experience and confirming that he majored in architecture at Anyang Technical College. Finally, counsel submitted an "Evaluation Report" from the Foundation for International Services, Inc., dated October 24, 2002. This report states that the beneficiary's formal education at Anyang Technical College "is equivalent to an associate's degree in architecture from an accredited community college in the United States." The report then reviews the beneficiary's work experience and concludes that a combination of his formal education and work experience is the equivalent of a bachelor's degree in architecture from an accredited college or university in the United States.

The director denied the petition, concluding that the beneficiary's associate degree is not acceptable evidence that the beneficiary meets the terms of the approved labor certification. We concur.

On appeal, counsel contends that the credentials evaluation determination combining the beneficiary's formal education and work experience should prevail when reviewing whether his qualifications meet the requirements of the labor certification. Counsel argues that CIS has the discretion to consider all elements of the beneficiary's background as an architectural drafter in order to grant him a degree equivalency and eligibility for the visa classification sought.

In evaluating a beneficiary's qualifications, CIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. CIS will not accept a degree equivalency or an unrelated degree when a labor certification plainly and expressly requires a candidate with a specific college degree. It is noted that the regulation at 8 C.F.R. § 204.5(l)(2) specifically defines a professional as a "qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent *degree* and is a member of the professions." (Emphasis added). In this case, the labor certification clearly requires that the job candidate have four years of college and a bachelor's degree with a major in architecture or drafting.

A combination of degrees, work experience, or certificates which, when taken together, equals the same amount of coursework required for a United States baccalaureate degree, is not a foreign equivalent bachelor's degree. Here, the evaluation specifically found that the beneficiary's attendance at the Anyang Technical College resulted in the equivalent of a United States associate's degree, not a bachelor's degree. In order to conclude that the beneficiary holds the requisite bachelor's degree, the evaluation erroneously combined the beneficiary's technical college study and subsequent work experience. We note that a bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244 (Comm. 1977). In that case, the Regional Commissioner declined to consider a three-year Bachelor of Science degree from India as the equivalent of a United States baccalaureate degree because the degree did not require four years of study. *Matter of Shah,* at 245. Based on similar reasoning, it certainly cannot be concluded that the beneficiary's attendance at Anyang Technical College satisfied the terms of the labor certification requiring four years of college and a baccalaureate degree.

Based on the evidence contained in the record, we concur with the director that the petitioner has not established that the beneficiary possesses the equivalent of a United States bachelor's degree as required by the terms of the labor certification.

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 appeal is dismissed.