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

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

[Redacted]

**JUL 03 2003**

File; [Redacted] IN 03 045 52235 Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner: [Redacted]  
Beneficiary: [Redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

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 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, Director  
Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant 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 seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner, an air freight company, seeks to employ the beneficiary as a marketing research analyst. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor. The director determined that the job requirements set forth on the labor certification do not require a member of the professions holding an advanced degree.

On appeal, counsel asserts that the classification designated on the petition was an error and requests reconsideration of the petition under section 203(b)(3) of the Act, 8 U.S. C. § 1153(b)(3), providing for the issuance of employment-based visas to "skilled workers, professionals and other workers."

In relevant part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a United States baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(2).

The regulation at 8 C.F.R. § 204.5(k)(4) states in pertinent part that the "job offer portion of an individual labor certification, Schedule A application, or Pilot Program application must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability."

The alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Block 14 and Block 15, which should be read as a whole, set forth the educational, training, and experience requirements. In this case, they state that a bachelor's degree and six months of experience in the job offered or a related occupation is required for the position

The director denied the petition, finding that the labor certification's specified minimum requirement of a bachelor's degree and six months of experience does not conform to the regulatory definition of the equivalent of an advanced degree.

On appeal, counsel does not challenge the director's interpretation of the ETA-750. She explains that the wrong version of the I-140 was inadvertently filed and requests reconsideration under section 203(b)(3)(A)(ii) of the Act (box "e" on the I-140 petition) which provides immigrant classifications for aliens who qualify as professionals. Counsel attaches another I-140 petition designating box "e" as the requested visa classification and additional labor market information relating to the position's minimum entry requirements.



We concur with the director's conclusion that the labor certification does not describe a position that requires an advanced degree or an alien of exceptional ability. The cover letter submitted with the petition does not seek classification under section 203(b)(3) of the Act. The record contains no request to change to the lesser classification prior to the appeal. The director did not err by considering the petition under the classification designated on the petition.

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.