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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.
BCIS, AAO, 20 Mass, 3/F
Washington, D.C. 20536

[REDACTED]

File: [REDACTED] LIN 03 011 50216 Office: NEBRASKA SERVICE CENTER

Date: **JUL 10 2003**

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

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 on appeal. The appeal will be dismissed.

The petitioner is a company that manufactures lawn and garden equipment. It seeks to employ the beneficiary permanently in the United States as an applications architect pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2). As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor. The director determined that job requirements set forth on the labor certification do not require an advanced degree professional.

On appeal, counsel requests reconsideration of the petition under a different immigrant classification.

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 indicate that an applicant with a bachelor's degree and 3 years of experience would be considered for the position.

The director denied the petition, finding that the labor certification's minimum educational requirements do not describe a position requiring an advanced degree as set forth in 8 C.F.R. § 204.5(k)(2) and (4). We concur.

On appeal, counsel does not challenge the director's interpretation of the ETA-750, but asserts that the original petition requesting consideration under section 203(b)(2) of the Act (box "d" of the I-140 petition) contained a typographical error. She states that box "e" should have been designated. Box "e" represents a visa classification of an alien under section 203(b)(3)(A)(i) and (ii) as a "skilled worker" or "professional." Counsel attaches a copy of an I-140 petition with box "e" checked and requests reconsideration of the beneficiary's qualifications pursuant to this petition's designation of the beneficiary as a skilled worker or professional.

The cover page submitted with the petition indicates that the petitioner sought a second preference visa classification consistent with box "d" checked on the immigrant visa petition initially submitted. In light

of the absence of any evidence in the record prior to the appeal reflecting an intention to seek a lesser classification, we cannot conclude that the director committed reversible error by considering the petition under the original classification designated on the petition. The director is not required to inquire whether the beneficiary might be eligible for a lesser classification, where the petitioner has not established the beneficiary's eligibility under the classification sought. We note that there is no statutory or regulatory provision that provides for the amendment of a visa classification once a decision has been rendered.

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.