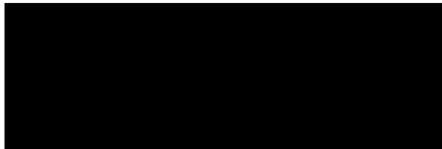


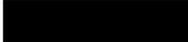
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U.S. Department of Homeland Security  
Bureau of Citizenship and Immigration Services

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

**PUBLIC COPY**



File:  Office: Nebraska Service Center Date:

IN RE: Petitioner:   
Beneficiary: 

APR 22 2003

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)

IN BEHALF OF PETITIONER:



**identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy**

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 on appeal. The appeal will be dismissed.

According to the Form I-140, Immigrant Petition for Alien Worker, the petitioner sought 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 or an alien of exceptional ability. As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the job offered did not require a member of the professions holding an advanced degree.

The petition was filed with the Nebraska Service Center on May 10, 2002. Under Part 2 of the Form I-140, the petitioner indicated that the petition was being filed for a member of the professions holding an advanced degree or an alien of exceptional ability.

On October 8, 2002, the Service Center issued the petitioner a Request for Evidence, stating: "Please review the category selected (Form I-140, Part 2), particularly in light of the educational/work experience requirements of Form ETA-750, and advise this office accordingly."

On December 20, 2002, the Service Center received a letter from counsel stating: "Please proceed with processing this case."

The response also included a letter from the petitioner, stating:

We believe that the box marked on the Form I-140, Part 2 was correctly selected. Box 'd' is for a member of the professions holding an advanced degree or an alien of exceptional ability (who is not seeking a national interest waiver). The Form ETA-750 requires a Masters in Marketing or Marketing Research. Since Mr. [REDACTED] received his Masters in Marketing Research from the University of Georgia, we believe that the appropriate box was marked on his I-140 petition.

On January 28, 2003, the director properly denied the petition citing the pertinent regulatory criteria at 8 C.F.R. § 204.5(k).

On appeal, counsel for the petitioner states:

[I]t is now our opinion that the [Bureau] was correct in its determination... [T]he proper category should have been identified under Section 203(b)(3)(A)(i/ii) with the I-140 box designation "e" – a skilled worker or professional... We are therefore requesting that the [Bureau] reconsider its denial decision and reopen Promotion Decisions, Inc.'s original I-140 petition filing.

Counsel is now requesting that the petition be considered under a separate immigrant

classification. There is, however, no provision in statute, regulation, or case law which permits a petitioner to change the classification of a petition once a decision has been rendered. Consequently, discussion in this matter may relate only to the beneficiary's eligibility pursuant to section 203(b)(2) of the Act.

The beneficiary in this matter possesses a United States Master's degree in Marketing Research from the University of Georgia. Consequently, he qualifies as an advanced degree professional. The issue to be determined here is whether this position being offered requires a member of the professions holding an advanced degree or its equivalent. The key to this determination is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered. Blocks 14 and 15 of the ETA-750 Part A must establish that the position requires an employee with either a master's degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(4)(i).

It is important that the ETA-750 be read as a whole. In particular, if the education requirement in block 14 includes an asterisk (\*) or other footnote, the information included in the note must be included in determining whether the educational requirement, as a whole, shows that an advanced degree or the equivalent is the minimum acceptable qualification for the position.

Under Block 15, the petitioner's ETA-750 Part A states the following: "Applicants may also qualify with a Bachelor's and 2 ½ yrs. exp." When read as a whole, the ETA-750 clearly does not require a bachelor's degree with five years of progressive experience, which is the equivalent of a master's degree. Therefore, this position, at a minimum, does not require a professional holding the equivalent of an advanced degree.

On appeal, counsel has stated that the Bureau was correct in its determination. Therefore, the petitioner has not established the beneficiary's eligibility pursuant to section 203(b)(2) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely 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.