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

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

[REDACTED]

JUN 25 2003

File: [REDACTED] LIN 02 249 52051 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
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, a university, seeks to employ the beneficiary as a planner. 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 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, Block 14 indicates that an applicant may have a bachelor's degree in architecture and four years experience in the job offered or the related occupation as an architect. Block 15 indicates that as an alternative to a major field of study of architecture, an applicant could have a major in "[p]lanning, including regional, community, or urban. In lieu of Bachelor's and 4 years experience, applicant may qualify with Master's and two years experience." Block 15 also indicates that an applicant's experience in the related occupation should be "4 years experience managing large-scale urban design, space planning, and architectural projects for public institutions."

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

On appeal, counsel does not challenge the director's interpretation of the ETA-750. He requests reconsideration under section 203(b)(3)(A)(i) and (ii) of the Act (box "e" on the I-140 petition) which provides immigrant classifications for aliens who qualify as skilled workers or professionals. Counsel indicates that the confusion arose because the Department of Labor applies a different advanced degree

equivalency standard. Counsel attaches another I-140 petition designating box "e" as the requested visa classification.

There is, however, no provision in statute or regulation that allows the Bureau to re-adjudicate a petition under a different visa classification once a decision on the visa petition has been rendered. Counsel was afforded the opportunity under the request for evidence to provide further information relevant to the visa classification, and failed to indicate at that time that the petitioner would prefer adjudication of the visa petition under the lower visa classification at section 203(b)(3). The appropriate remedy after the decision is rendered would be to file another petition with the proper fee and required documentation.

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.