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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]

JUN 25 2011

File: [REDACTED] LIN 02 259 53055 Office: NEBRASKA SERVICE CENTER

Date:

IN RE: Petitioner:  
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.

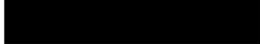
If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent 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.

[Handwritten signature]

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 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 an assistant professor. As required by statute, the petition was accompanied by an individual labor certification approved by the Department of Labor. The director determined that the beneficiary did not meet the job requirements set forth on the labor certification.

On appeal, counsel contends that the educational requirements listed on the approved labor certification contain a typographical error. Counsel asserts that the beneficiary's qualifications meet the statutory qualifications under section 203(b)(2) of the Act and that, in this case, the director should have exercised discretion in approving the petition.

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. It is not disputed that the beneficiary possesses an advanced degree. As the degree, however, is in psychology and not sociology as required by the approved labor certification, the beneficiary does not meet the minimum educational requirements of the job offer.

The alien labor certification, "Offer of Employment," (Form ETA-750 Part A) describes the terms and conditions of the job offered. Blocks 14 and 15, which should be read as a whole, set forth the educational, training, and experience requirements. In this case, that information appears as follows:

Block 14

Education	College Degree Required -- Ph.D. Major Field of Study -- Sociology
Experience	Job Offered/Related Occupation -- none listed Related Occupation (specify) -- none listed

Block 15

Other Special Requirements	Education and experience in designing and applying qualitative and quantitative assessment; expertise in evaluation theory and methodology
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No other information appears in Block 14 or 15. The beneficiary holds a Ph.D. in psychology from Claremont Graduate University, Claremont, California. The director determined that the beneficiary lacked the requisite major field of study of sociology required by the terms of the approved labor certification and denied the petition.

On appeal, counsel asserts that the omission of language in Block 14 that would have permitted a major in a related discipline was inadvertent. He argues that but for the Department of Labor's policy of disallowing post-certification amendments of labor certifications, the matter could have been resolved easily. He points out that the actual recruitment of candidates for the position was not limited to applicants with only doctorates in sociology. He includes examples of the notice of job recruitment in which the educational requirement is stated as "a doctorate in a relevant discipline (e.g., Sociology, Social Psychology, Education, Political Science, Public Administration)."

The alien must have all the education, training and experience specified in the job offer as of the time of first filing the labor certification application. *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971); *Matter of Wing's Tea House*, 16 I&N 158 (Reg. Comm. 1977). The Bureau must determine if the alien is qualified under the labor certification requirements. Section 203(b)(2)(A) provides that "[v]isas shall be made available . . . to *qualified* immigrants who are members of the professions holding advanced degrees or their equivalent . . . (emphasis supplied)." In this case, it must be shown that the beneficiary meets the educational, training, experience and other special requirements listed in blocks 14 and 15 of the approved labor certification as of April 1, 2002, the filing date of the labor certification. The Bureau will not alter the substantive job requirements set forth on the approved Form ETA 750 in order to cure even inadvertent errors made by a petitioner. As the beneficiary's major field of study is psychology, rather than sociology as required by the labor certification, the director's decision in denying this petition was correct.

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.