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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 2003

File: [REDACTED] LIN 03 007 53138 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 on appeal. The appeal will be dismissed.

The petitioner is a company that supplies automotive interior and seating systems. It seeks to employ the beneficiary permanently in the United States as a systems engineer 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 the job requirements set forth on the labor certification do not require an advanced degree professional.

On appeal, counsel argues that the beneficiary clearly satisfies the alternative minimum job requirements set forth on the labor certification as well as the regulatory requirements for an advanced degree professional. Counsel also contends that the beneficiary could be alternatively classified under section 203(b)(3)(A)(i) of the Act which provides immigrant classifications for aliens who qualify as skilled workers. There is no provision in regulation, statute, or case law which allows a visa classification to be considered in the alternative or be changed on an I-140 after a decision has been rendered. Counsel indicates that a separate application has been submitted for the section 203(b)(3) visa classification, which is the appropriate remedy for consideration under the different visa 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 U.S. 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 basic issue is whether this particular position requires a member of the professions holding an advanced degree or its equivalent. 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 must have a master's degree or foreign equivalent in computer science. Block 15 states that "in lieu of a Master's degree, will accept candidates with a *Bachelor's degree or equivalent combination of education and experience*, or its foreign equivalent, together with five years of related progressive experience" [emphasis added].

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

On appeal, counsel does not specifically dispute the director's interpretation of the labor certification, but contends that the beneficiary's credentials satisfy the alternate minimum requirements set forth on the ETA-750 Part A and the regulatory requirements for a member of the professions with an advanced degree.

Counsel's arguments do not overcome the basis of the director's decision. As stated above, the position cannot be found to require a candidate with an advanced degree pursuant to section 203(b)(2) of the Act because the alternative requirements for the position described in Block 15 state that the petitioner would accept a substitution of a combination of education and experience for a bachelor's degree. The regulations clearly state that while post-baccalaureate experience can be substituted for a master's degree, there are no provisions that allow combinations of education and experience to serve in lieu of the underlying bachelor's degree.

As noted by the director, 8 C.F.R. § 204.5(k)(4) provides that the job offer portion of the labor certification must demonstrate that the job requires a professional holding an advanced degree or the equivalent or an alien of exceptional ability. In this case, the petitioner has not shown that this position, at a minimum, requires a professional holding the equivalent of an advanced degree

Beyond the decision of the director, we do not agree with counsel's assertion that the beneficiary has the equivalent of an advanced degree. The record contains a credentials evaluation from the Foundation for International Services, Inc. dated March 31, 2000.¹ It states that the beneficiary's 1990 bachelor of science degree from Camrose Lutheran College in Camrose, Alberta, Canada represents "three years of university-level credit from an accredited college or university in the United States." The evaluation then combines the beneficiary's employment experience with his three years of college credit and concludes that it represents the U.S. equivalent of a bachelor's degree in computer science.

As noted above, the beneficiary must have a single degree that is the equivalent of a United States baccalaureate degree. A series of degrees, experience, certificates or diplomas that may equal the same amount of coursework required for a United States baccalaureate degree, does not meet the regulatory requirement of a foreign equivalent degree. As such, the beneficiary's subsequent work experience cannot be considered post-baccalaureate experience equivalent to an advanced degree. Thus, even if the labor certification's job requirements had accurately represented a position requiring an advanced degree professional, the beneficiary's credentials do not demonstrate that he holds an advanced degree.

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.

¹ This is the only credentials evaluation contained in the record. Contrary to counsel's assertion, it makes no mention that the beneficiary has a master's degree equivalency.