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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JUN 01 2004

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

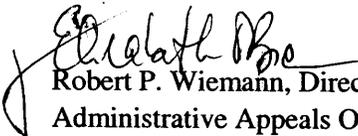
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office 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.


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.

On the Form I-140 petition, the petitioner checked that it 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 an alien of exceptional ability or a member of the professions holding an advanced degree. The petitioner seeks to employ the beneficiary as a club coach.

As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the proffered position does not require a professional holding an advanced degree or its equivalent.

On appeal, counsel asserts that the wrong classification was mistakenly checked on the petition and requests that the petition be adjudicated in a lesser classification. The petitioner submits an amended petition.

In pertinent 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. 8 C.F.R. § 204.5(k)(2) defines “advanced degree” as a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The same provision allows the substitution of a baccalaureate degree followed by five years of progressive experience in the specialty. 8 C.F.R. 204.5(k)(4) states, “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.”

In this matter, the Labor Certification, Form ETA 750, indicates that a baccalaureate degree and three years of experience are required for the position. In light of this information, the director concluded that the job did not require an advanced degree professional.

As stated above, on appeal counsel asserts that the advanced degree professional classification was checked by mistake and requests that the petition be adjudicated as a petition seeking to classify the beneficiary as a skilled worker or professional under section 203(b)(3) of the Act. Counsel further asserts that she was advised by an immigration officer at the Nebraska Service Center that a letter from counsel was sufficient to correct an error in classification sought and that in a teleconference between the Center and the American Immigration Lawyers Association (AILA), the Center provided similar information. The notes of that teleconference further provide: “In some instances, such as when the cover letter clearly indicates the preference sought, the NSC may telephone the attorney of record to ask if the classification was incorrectly indicated on the I-140.”

While we are not bound by advice provided by information officers, upholding the director’s denial in this matter does not conflict with the information provided to counsel by an immigration officer at the Nebraska Service Center. The letter provided by counsel requesting a change in classification is dated one week after the director’s final decision. Nothing in the record suggests that counsel was advised that a letter is sufficient to correct a clerical error in the classification sought after the director has issued a final denial. While the director advised AILA that the Center *may* telephone an attorney of record when the classification on the