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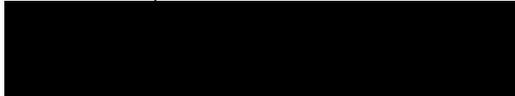


Office: NEBRASKA SERVICE CENTER

Date: JUN 01 2004

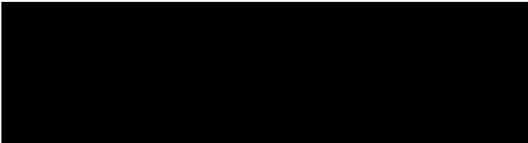
IN RE:

Petitioner:  
Beneficiary:



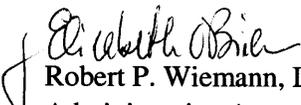
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:



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.

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 seeks to employ the beneficiary as a bilingual administrative assistant. As required by statute, the petition was accompanied by certification from the Department of Labor. As the petitioner did not claim that the beneficiary qualifies as an alien of exceptional ability, the director only considered whether the proffered position requires a professional holding an advanced degree or its equivalent and concluded that it did not.

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. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. 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 no degree and five years of experience is 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.

The initial cover letter from counsel submitted with the petition states that item number five accompanying the petition is a letter “of the Second Employment Based Preference.” Exhibit five is a letter from the petitioner indicating that it is in reference to “Second Employment Based Preference Petition (I-140).”<sup>1</sup> In light of the absence of any evidence in the record prior to the appeal reflecting an intent to seek a lesser classification, we cannot conclude that the director committed any error, let alone reversible error, by considering the petition under the classification checked on the petition and discussed in two separate submissions with the initial petition. Where the director determines that the petitioner has not established a beneficiary’s eligibility under the classification sought, the director need not inquire as to whether the beneficiary might be eligible for a lesser classification.

We note the following inconsistencies for the record. As stated above, Part 14 of the Form ETA-750 indicates that no post-secondary degree is required for the position. In counsel’s cover letter submitted with the petition, however, counsel states that a “baccalaureate degree is required for entry into the occupation.” In

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<sup>1</sup> We note that “second” is handwritten over correction fluid. Holding the document to the light, it is clear that typed under the correction fluid is the word “third.” Nevertheless, this correction does not suggest that the decision to file for a second preference classification was a clerical error. Rather, it reflects a deliberate choice after considering filing for third preference classification.

its letter, the petitioner asserts that “the Labor Certification in this case, classified the job opportunity as ‘Systems Engineer’ within their Dictionary of Occupational Titles. This D.O.T. designation, 030.062.010, is classified as ‘professional’ by the Department of Labor.” The actual Form ETA-750, however, reveals that the Department of Labor certified the position as a systems analyst, D.O.T. code 030.162.014.

Our review of the Dictionary of Occupational Titles, available at [www.oalj.dol.gov](http://www.oalj.dol.gov), reveals that code 030-162-014 has an industry code of “professional and kindred” occupations. The index of industry codes states: “Occupations of a professional *character*, such as agronomists, entomologists, and plant pathologists, are included in PROFESSIONAL AND KINDRED OCCUPATIONS (profess. & kin.)” (Emphasis added.) There is no indication that all occupations of a professional character require a baccalaureate degree.

The Occupational Outlook Handbook 2004-2005, available at [www.bls.gov](http://www.bls.gov), provides, in regard to Computer Systems Analysts, Database Administrators, and Computer Scientists, that “a bachelor’s degree is a prerequisite for many jobs; however, some jobs may require only a 2-year degree.”

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, U.S.C. § 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.