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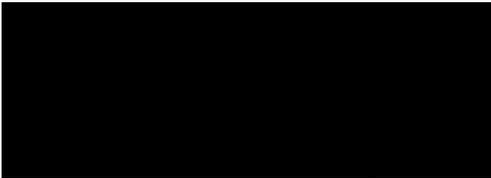
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U.S. Department of Homeland Security
20 Mass. Rm. A3042, 425 I Street, N.W.
Washington, DC 20529

U.S. Citizenship
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FILE: [Redacted]

Office: NEBRASKA SERVICE CENTER

Date: JUN 4 2004

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

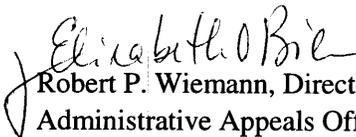
PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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 summarily dismissed.

Part 9 of Form I-140, Immigrant Petition for Alien Worker, reflects that attorney James Xu prepared the petition on the petitioner's behalf. The record contains a properly executed Form G-28, Notice of Entry of Appearance as Attorney or Representative, indicating that attorney James Xu represents the beneficiary, however, there is no Form G-28 confirming that he represents the petitioner in this matter. On September 24, 2003, the director issued a notice acknowledging that James Xu is "the attorney or representative of the affected party" and instructing him to submit Form G-28 to confirm that he represents the petitioner. Counsel responded to this request by submitting a second Form G-28 indicating that he represents the beneficiary.

The petitioner seeks classification 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 or an alien of exceptional ability. As required by statute, the petition was accompanied by certification from the Department of Labor. The director found that the job offered did not require a professional holding an advanced degree.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

The regulation at 8 C.F.R. § 204.5(k)(2) states:

Advanced degree means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states:

(i) To show that the alien is a professional holding an advanced degree, the petition must be accompanied by:

(A) An official academic record showing that the alien has an United States advanced degree or a foreign equivalent degree; or

(B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

The regulation at 8 C.F.R. § 204.5(k)(4)(i) states in pertinent part that:

Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor.... The job offer portion of the 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 Form I-140 petition was filed on July 17, 2003. Part 2 of the petition form lists eight different petition types, including “[a] skilled worker or professional” and “[a] member of the professions holding an advanced degree or an alien of exceptional ability.” Box “d” beside the latter category was checked.

The issue to be determined here is whether the position being offered requires a member of the professions holding an advanced degree or its equivalent. The key to this determination is found on Form ETA-750 Part A. This section of the application for alien labor certification, “Offer of Employment,” describes the terms and conditions of the job offered. Blocks 14 and 15 of the ETA-750 Part A must establish that the position requires an employee with either a master’s degree or a U.S. baccalaureate or foreign equivalent degree followed by at least five years of progressive experience in the specialty. 8 C.F.R. § 204.5(k)(4)(i).

Under Block 14, Form ETA-750 Part A indicates that the position requires a bachelor’s degree in Computer Information Systems and one year of experience in the job offered. When read as a whole, the ETA-750 clearly does not require a bachelor’s degree with five years of progressive experience, which is the equivalent of a master’s degree. Therefore, this position, at a minimum, does not require a professional holding the equivalent of an advanced degree.

The director denied the petition, stating that the job offered did not require a professional holding an advanced degree. The director also noted the evidence presented “did not include a copy of the beneficiary’s official transcript or any other evidence [showing] that the beneficiary received a baccalaureate degree.”

On appeal, counsel states:

The above captioned petition was filed on July 17, 2003, seeking to classify the beneficiary as an immigrant under section 203(b)(2) of the Immigration and Nationality Act, as amended.

* * *

We have checked our record and found a clerical mistake by checking the wrong box.... We believe that the beneficiary [should] be given an opportunity to correct this simple mistake by amending the original petition through [a] request for evidence.

The appellate submission included a copy of the beneficiary's Bachelor of Science degree and official academic transcript. These documents, however, do not overcome the director's finding that the job offered did not require a professional holding an advanced degree.

Rather than challenging the director's findings cited in the August 11, 2003 decision, counsel is now requesting that the petition be considered under a separate immigrant classification. There is, however, no provision in statute, regulation, or case law that permits a petitioner to change the classification of a petition once a decision has been rendered. The petitioner and counsel's failure to properly identify the classification sought does not allow the petitioner the opportunity to now change classifications at the appellate stage. We note here that the letter submitted by counsel on appeal (dated September 3, 2003) does not specifically identify the classification now sought, nor does it cite any statute other than section 203(b)(2) of the Act. If the petitioner seeks to classify the beneficiary as a skilled worker or professional, then it should file a new petition under that classification with the proper supporting evidence and fee.

In this matter, we find that the director adjudicated this petition under the classification requested on the Form I-140 petition. Consequently, any discussion in this matter may relate only to the petitioner's eligibility pursuant to section 203(b)(2) of the Act.

On appeal, the petitioner has not addressed the beneficiary's eligibility under section 203(b)(2) of the Act. As stated in 8 C.F.R. § 103.3(a)(1)(v), an appeal shall be summarily dismissed if the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal. Here, the petitioner has not specifically challenged the director's findings, nor provided any evidence that would overcome the grounds for denial. The appeal must therefore be summarily dismissed.

ORDER: The appeal is dismissed.