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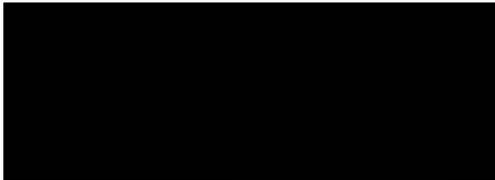
U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. 3000
Washington, DC 20529



U.S. Citizenship
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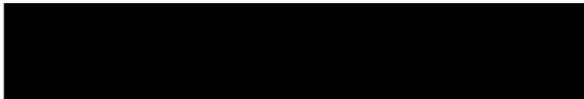


FILE: [Redacted]
LIN 07 186 52183

Office: NEBRASKA SERVICE CENTER

Date: FEB 04 2008

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.

A handwritten signature in cursive script that reads "Robert P. Wiemann".

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained; the petition will be approved.

The petitioner is a wholesale jewelry business. It seeks to employ the beneficiary permanently in the United States as a market research specialist 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, an ETA Form 9089 Application for Alien Employment Certification approved by the Department of Labor (DOL), accompanied the petition. The director determined that the job offered did not require a member of the professions.

On appeal, counsel asserts a market research specialist does require a baccalaureate and that the statute and regulations do not require that the alien have the degree normally required for entry into the profession. While we withdraw the director's finding that the job did not require a *member of the professions* holding an advanced degree, we reject counsel's overly broad assertion that an alien need not have the degree required for entry into the profession to be a member of that profession.

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 United States academic or professional degree or a foreign equivalent degree above the baccalaureate level. 8 C.F.R. § 204.5(k)(2). The regulation further states: "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." *Id.*

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)(4) provides the following:

(i) *General.* Every petition under this classification must be accompanied by an individual labor certification from the Department of Labor, by an application for Schedule A designation (if applicable), or by documentation to establish that the alien qualifies for one of the shortage occupations in the Department of Labor's Labor Market

Information Pilot Program. To apply for Schedule A designation or to establish that the alien's occupation is within the Labor Market Information Program, a fully executed uncertified Form ETA-750 in duplicate must accompany the petition. **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.**

(Bold emphasis added.)

We note that the beneficiary in this matter has a Master's degree in Communication Arts from the New York Institute of Technology. Thus, she holds an advanced degree. At issue is whether the job requires a member of the professions and whether the beneficiary is a member of that profession. The key to determining the job qualifications is found on ETA Form 9089 Part H. This section of the application for alien labor certification, "Job Opportunity Information," describes the terms and conditions of the job offered. It is important that the ETA Form 9089 be read as a whole.

In this matter, Part H, line 4, of the labor certification reflects that a Master's degree is the minimum level of education required. On line 4-B, the petitioner indicated that the major field of study required was "any major." Line 6 indicates that one year of experience in the job offered is required. Line 8 reflects that no combination of education or experience is acceptable in the alternative. Line 9 reflects that a foreign educational equivalent is not acceptable. Finally, line 10 reflects that experience in an alternate occupation is not acceptable.

As defined at Section 101(a)(32) of the act, profession "shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." The regulation at 8 C.F.R. § 204.5(k)(2), in pertinent part, defines "profession" as follows:

[O]ne of the occupations listed in section 101(a)(32) of the Act, as well as any occupation for which a United States baccalaureate degree or its foreign equivalent is the minimum requirement for entry into the occupation.

The director acknowledged these definitions, but then relied on *Matter of Shin*, 11 I&N Dec. 686 (Dist. Dir. 1966) and *Matter of Palanky*, 12 I&N Dec. 66 (Regl. Commr. 1966), for the **proposition** that the degree must be related to the field. We note that in *Matter of Shin*, 11 I&N Dec. at 688, the District Director did state that a degree in and of itself was insufficient; rather, the "knowledge acquired must also be of [a] nature that is a realistic prerequisite to entry into the particular field of endeavor." The following discussion, however, was limited to the level of education required, not the major field of study. Moreover, *Matter of Palanky*, 12 I&N Dec. at 68, addressed an occupation that did not require a full baccalaureate. Most significantly, as noted by counsel, these cases predate the regulation at 8 C.F.R. § 204.5(k)(2). Therefore, we must defer to the definition in that regulation, which states only that a profession must require a baccalaureate for entry into the occupation.

Our interpretation of the regulation is bolstered by the statutory definition of professionals, which includes teachers in elementary schools. According to the Department of Labor's Occupational Outlook Handbook, available on the Bureau of Labor Statistic's website at www.bls.gov, an elementary school teacher must have a bachelor's degree but not necessarily in a particular field.

We emphasize, however, that in considering whether the job requires a member of the professions or whether the beneficiary is a member of that profession, we rely on our own definition of "profession" at 8 C.F.R. § 204.5(k)(2). This definition is used by CIS in determining whether an alien is qualified for the classification sought in this matter, a determination that is solely under CIS jurisdiction. See *Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305, 1309 (9th Cir. 1984); *Madany v. Smith*, 696 F.2d 1008, 1012-1013 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006, 1008 (9th Cir. 1983).¹ In other words, DOL certification does not bind us in determinations of eligibility for a visa classification. Moreover, the regulation provides that a profession is an occupation for which a United States baccalaureate degree or its foreign equivalent is the *minimum* requirement for *entry* into the occupation. Thus, some professions may require *more* than a baccalaureate in an unspecified field for *entry* into that particular profession. In such cases, the director would be justified in considering, independent of whether the alien meets the job requirements certified by DOL and is a member of some other profession, whether the alien can truly be considered a member of the profession associated with the occupation certified by DOL. We note that being a member of the professions does not entitle the alien to classification as a professional if he does not seek to continue working in that profession. See *Matter of Shah*, 17 I&N Dec. 244, 246-47 (Regl. Commr. 1977).

The job as certified by DOL in this matter requires a Master's degree and the director did not reference a source of information suggesting that a minimum of a baccalaureate was not a normal requirement for the occupation. The Occupational Outlook Handbook (OOH) published by DOL is a primary source of information as to the normal minimum requirements for an occupation. In this matter, the OOH 175 (2006-07 ed.) states that the occupation requires "at least a baccalaureate" but that a Master's degree may be required. The OOH further lists useful undergraduate coursework to prepare for the occupation, including "liberal arts and social science courses." *Id.* at 176. Finally, the OOH states that job opportunities are best for those with a Master's degree or Ph.D. "in marketing or a related field and strong quantitative skills." *Id.* at 175. This language reveals that while a master's degree *in a specific field* is helpful, it is not required for entry into the profession.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden.

ORDER: The decision of the director is withdrawn. The appeal is sustained and the petition is approved.

¹ *But cf. Hoosier Care, Inc. v. Chertoff*, 482 F.3d 987 (7th Cir. 2007) relating to a lesser classification than the one involved in this matter and relying on the regulation at 8 C.F.R. § 204.5(l)(4), a provision that does not relate to the classification sought here.