

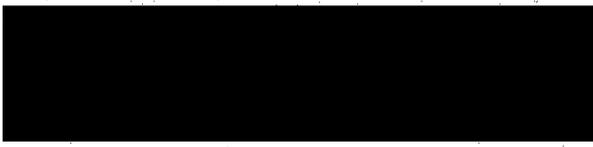


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U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS  
425 Eye Street N.W.  
ULLB, 3rd Floor  
Washington, D.C. 20536



File: [Redacted] Office: NEBRASKA SERVICE CENTER

Date:

MAR 12 2001

IN RE: Petitioner:  
Beneficiary:



Petition: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to § 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3).

IN BEHALF OF PETITIONER:



Public Copy

INSTRUCTIONS:

This is the decision in your case. All documents have been returned to the office which 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 which 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 Service 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 which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,  
EXAMINATIONS

Robert P. Wiemann, Acting Director  
Administrative Appeals Office

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prevent clearly identified  
[Redacted]

**DISCUSSION:** The immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a firm which develops and manufactures electronics. It seeks to employ the beneficiary as a production supervisor. Accordingly, the petitioner filed the current petition to classify the beneficiary as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i). The director determined that the beneficiary did not possess the required educational background, an associate's degree, as stated on the Form ETA-750, Application for Alien Employment Certification.

On appeal, counsel for the petitioner states that the director erroneously concluded that the labor certification requires the beneficiary to possess an associate's degree. Counsel further asserts that the Department of Labor would not have approved the labor certification if the beneficiary had not met the minimum requirements stated on the labor certification.

Upon filing the appeal, counsel stated that he needed an additional 90 days to submit a legal brief, but did not demonstrate good cause for the request. Six months after filing the appeal, counsel requested an additional unspecified amount of time to prepare a brief in this matter, explaining that "[t]here are several interesting legal issues involved in this appeal which we would like to discuss and have considered for formal review by your office." Again, counsel did not show good cause for the requested extension. Counsel's request is denied. See 8 CFR 103.3(a)(2)(vi).

Section 203(b)(3) of the Act states, in pertinent part:

(A) In general. - Visas shall be made available . . . to the following classes of aliens who are not described in paragraph (2):

(i) Skilled workers. - Qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

Furthermore, 8 CFR 204.5(l)(3)(ii)(B) states:

(B) *Skilled workers.* If the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification, meets the

requirements for Schedule A designation, or meets the requirements for the Labor Market Information Pilot Program occupation designation. The minimum requirements for this classification are at least two years of training or experience.

As required by 8 CFR 204.5(1)(3)(i), the petitioner submitted an individual labor certification, Form ETA-750, which has been endorsed by the Department of Labor. At block 14, the labor certification requires two years of college and states that an Associate's degree is the minimum level of education required for a worker to perform the job duties in a satisfactory manner. The labor certification specifically requires a degree with a major in electronics or quality control. The labor certification does not state that a degree equivalency or any lesser level of education will satisfy the requirement. Regarding the required level of experience, block 14 of the labor certification requires two years in the job offered plus two years in the related occupation of "electronics/ electrical/quality control technician OR [sic] 4 yrs. experience in job offered or in [a] related occupation."

The director denied the petition, finding that the beneficiary did not possess the required associate's degree. The director noted that "[t]he ETA-750 does not indicate that four years experience would be acceptable in lieu of the associate's degree."

Counsel's assertions are not persuasive. To determine whether a beneficiary is eligible for a third preference immigrant visa, the Service must ascertain whether the alien is in fact qualified for the certified job. In evaluating the beneficiary's qualifications, the Service must look to the job offer portion of the labor certification to determine the required qualifications for the position; the Service may not ignore a term of the labor certification, nor may it impose additional requirements. See Matter of Silver Dragon Chinese Restaurant, 19 I&N Dec. 401, 406 (Comm. 1986). See also Madany v. Smith, 696 F.2d 1008 (D.C. Cir. 1983); K.R.K. Irvine, Inc. v. Landon, 699 F.2d 1006 (9th Cir. Cal. 1983); Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey, 661 F.2d 1 (1st Cir. 1981).

Despite counsel's protests, the director properly interpreted the Form ETA-750 as stating that the position requires an associate's degree. The phrase "OR [sic] 4 yrs. experience in job offered or in [a] related occupation" was clearly placed in the portion of the labor certification relating to the required level of experience. The petitioner did not provide any notation on the labor certification that would indicate that four years of experience would substitute for the required associate's degree.



The burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not sustained that burden.

**ORDER:** The appeal is dismissed.