

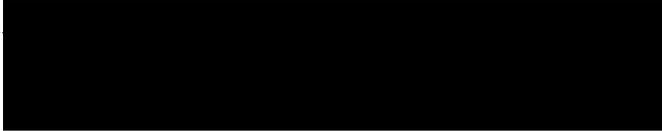


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U.S. Department of Justice  
Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS  
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File: EAC 01 233 61140 Office: VERMONT SERVICE CENTER

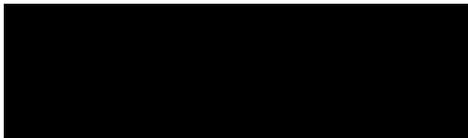
Date: MAY 13 2002

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, Director  
Administrative Appeals Office

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

The petitioner is a company which produces, distributes, sells and rents audio, video CD's, DVD's and specializes in Indian movies. It seeks to employ the beneficiary as a rerecording mixer. Accordingly, the petitioner filed the current petition to classify the beneficiary as a professional 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, as stated on the Form ETA-750, Application for Alien Employment Certification.

On appeal, counsel for the petitioner states that the beneficiary does have an undergraduate degree as required by the labor certificate.

Section 203(b)(3) of the Immigration and Nationality Act (the Act) states:

(A) In general. - Visas shall be made available, in a number not to exceed 28.6 percent of such worldwide level, plus any visas not required for the classes specified in paragraphs (1) and (2), 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.

(ii) Professionals. - Qualified immigrants who hold baccalaureate degrees and who are members of the professions.

As required by 8 CFR 204.5(1)(3)(i), the petitioner has submitted an individual labor certification, Form ETA-750, which has been endorsed by the Department of Labor. At block 14, the labor certification states that a bachelor's degree or equivalent in videography and computer graphics is the minimum level of education required for a worker to perform the job duties in a satisfactory manner.

The director determined that the petitioner had not established that the beneficiary had the required Bachelor's degree and denied the petition.

The record contains an educational evaluation from Leslie S. Jacobson, formerly used in support of an H-1B petition, which states that based upon a combination of a three-year diploma program, a one-year course of study, and 13 years of experience, the beneficiary has the equivalent of a bachelor's degree in civil engineering as well as a major in computer graphics. While this evaluation states that the beneficiary has attained the equivalency of a bachelor's degree, the petitioner had not indicated that a combination of education and experience can be accepted as meeting the minimum educational requirements stated on the labor certification. Therefore, the combination of education and experience may not be accepted in lieu of education.

On appeal, counsel submits another educational evaluation from [REDACTED] and argues that a degree requirement is not a prerequisite to classify an occupation as a profession. Counsel further argues that:

...an individual can become a member of the profession through a number of years of dedicated work in that profession and that there is no absolute requirement that the individual must have graduated from an accredited college to reach to plateau of being called a "professional." Also that a combination of high education and specific job experience can qualify a person for professional status in an occupation where that person does not have a bachelor's degree.

Counsel argues that the petitioner has submitted documentation to establish that the beneficiary had a combination of education and experience to meet the requirements set forth in the Form ETA 750 prior to the filing date of the petition. As stated by the director, the three year experience for one year of education rule used in the evaluation is applicable to nonimmigrant H1B petitions, not immigrant petitions. The beneficiary is required to have a bachelor's degree on the Form ETA 750. The petitioner's actual minimum requirements could have been clarified or changed before the ETA 750 was certified by the Department of Labor. Since that was not done, the director's decision to deny the petition must be affirmed.

The issue here is whether the beneficiary met all of the requirements stated by the petitioner in block #14 of the labor certification as of the day it was filed with the Department of Labor. The petitioner has not established that the beneficiary had a bachelor's degree in videography and computer graphics on March 5, 2001. Therefore, the petitioner has not overcome the reason for denying the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed.