



PUBLIC COPY

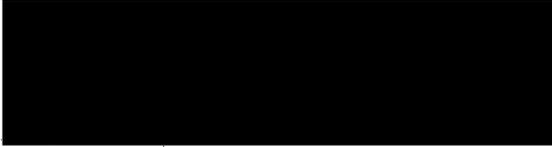
U.S. Department of Justice

Immigration and Naturalization Service

B6

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

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



File: LIN 01 228 54737

Office: Nebraska Service Center

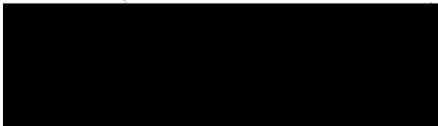
Date: **JAN 31 2003**

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:



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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center. The Associate Commissioner for Examinations dismissed a subsequent appeal, affirming the director's decision. The matter is now before the Associate Commissioner on a motion to reopen. The motion will be granted. The previous decisions of the director and Associate Commissioner will be affirmed. The petition will be denied.

The petitioner is a school. It seeks classification of the beneficiary pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(3) so that it may employ the beneficiary permanently in the United States as a teacher. The director determined that the petitioner had not established that the beneficiary has the qualifications for the job, as stated, by the petitioner, on the Form ETA 750 Application for Alien Employment Certification. The Associate Commissioner affirmed that decision, dismissing the appeal.

In support of the motion, counsel submits a brief and additional evidence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary or seasonal nature, for which qualified workers are unavailable in the United States.

Section 203(b)(3)(A)(ii) of the Act provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and who are members of the professions.

A labor certification is an integral part of this petition, but the issuance of a labor certification does not mandate the approval of the relating petition. To be eligible for approval, a beneficiary must have all the training, education, and experience specified on the labor certification as of the petition's priority date. Matter of Wing's Tea House, 16 I&N Dec. 158 (Act. Reg. Comm. 1977). Here, the petition's filing date is January 17, 2001.

The Application for Alien Employment Certification (Form ETA 750) indicated that the position of elementary school teacher requires a bachelor's degree in education.

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

On appeal, counsel stated,

Educational documents submitted are at least minimum required on ETA forms. Denial fails to consider education and experience.

An elementary education degree comprises many parts and the beneficiary has all the requirements.

In a brief filed in support of the appeal, counsel argued that the beneficiary completed the equivalent of a bachelor's degree in education.

In support of that contention, counsel submitted a transcript from the Adam Mickiewicz University, in Poznan, Poland, showing that the beneficiary earned a degree in German. Counsel also submitted a transcript showing that the beneficiary had attended the University of South Africa in Pretoria, where the beneficiary earned a degree in school media center science, and a transcript showing that the beneficiary attended the Montessori Training Centre of British Columbia.

Counsel also submitted letters from the principal and the Human & Social Sciences department head of a South African primary school. The principal indicates that the beneficiary worked at the school from 1995 to 1998, managing a media center and teaching history, geography, science, art, and library resource education. The department head indicated that the beneficiary worked in his department for six months.

Finally, counsel submitted letters from two educational evaluators. The first stated that, in his opinion, the beneficiary:

enrolled in a Diploma (sic) in Special Education Program offered by the University of South Africa . . . completed her studies . . . and was awarded a Diploma in Special Education.

The letter further states that the beneficiary:

. . . attained the equivalent of a Bachelor of Education Degree, with a concentration in German and Elementary Education from an accredited institution of higher education in the United States.

The second evaluator stated that the beneficiary has:

. . . achieved the equivalent of at least a bachelor's degree, specialized in German Language and Literature and including preparation for teaching, at an accredited institution in the United States.

The director found that the petitioner had not shown that the beneficiary possesses a bachelor's degree in education, and denied the petition.

In support of the motion, counsel states that the requirement was incorrectly stated on the Form ETA 750. Counsel states that the proffered position requires a bachelor's degree in education or the equivalent. Although the beneficiary does not have a bachelor's in education, counsel states that she has the equivalent.

Despite counsel's arguments. The Service will not accept a degree equivalency when a labor certification plainly and expressly requires a specific degree. 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 F2d 1006 (9th Cir. Cal. 1983); Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey, 661 F2d 1 (1st Cir. 1981).

Here, block 14, of the Form ETA-750 plainly states that a four-year bachelor's degree in education is the minimum level of education required to adequately perform the certified job. As the beneficiary has not earned a bachelor's degree in education, she does not qualify for the certified position.

One of the educational evaluations states that the beneficiary has a degree in special education. The documentation in the file does not support that contention, and it shall not be addressed further. The file contains no evidence to indicate that the petitioner has any degree in education.

The Service uses an independent evaluation of a person's foreign education as an advisory opinion only. Where an evaluation is not in accord with previous equivalencies or is in any way questionable, it may be rejected or accorded less weight. See Matter of Sea, Inc., 19 I&N Dec. 817 (Comm. 1988).

The petitioner has not established that the beneficiary had a bachelor's degree in education on February 17, 2001. Therefore,

the petition may not be approved.

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 sustained that burden.

ORDER: The appeal is dismissed.

RECEIVED
MAY 1 1964