

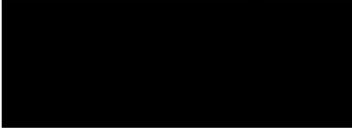


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U.S. Department of Justice
Immigration and Naturalization Service

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



File: LIN 01 176 55040 Office: Nebraska Service Center
[Redacted] relates)

Date: JUL 11 2002

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

Petition: Petition for a Nonimmigrant Worker Pursuant to Section 214(e)(2) of the Immigration and Nationality Act, 8 U.S.C. 1184(e)(2)

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
Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant 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 seeks to classify the beneficiary, a native and citizen of Mexico, as a TN-2 alien to perform services as a professional business person. The petitioner seeks to employ the beneficiary as a research and development engineer.

The director concluded that the petitioner had failed to establish that the beneficiary meets the minimum educational or alternative credential requirements for the classification sought and denied the petition accordingly.

On appeal counsel asserts that the director did not correctly interpret the NAFTA Treaty and did not follow Service regulations in denying the petition. Counsel indicates that a brief and/or evidence will be forthcoming within 30 days after filing the appeal. Since more than six months have passed and no new information or documentation has been received, a decision will be rendered based on the present record.

Section 214(e)(1)(2) of the Immigration and Nationality Act, 8 U.S.C. 1184(e)(1)(2), states:

An alien who is a citizen of . . . Mexico . . . who seeks to enter the United States under and pursuant to the provisions of Section D of Annex 1603 of the North American Free Trade Agreement (in this subsection referred to as "NAFTA") to engage in business activities at a professional level as provided for in such Annex, may be admitted for such purpose under regulations of the Attorney General promulgated after consultation with the Secretaries of State and Labor. For purposes of this Act, including the issuance of entry documents and the application of subsection (b), such alien shall be treated as if seeking classification, or classifiable, as a nonimmigrant under section 101(a)(15)

The regulation at 8 C.F.R. Part 214.6(d) states in pertinent part:

. . . A petition in behalf of a citizen of Mexico seeking classification as a TN professional shall be accompanied by . . . (ii) Evidence that the beneficiary meets the minimum education requirements or alternative credentials requirements of Appendix 1603.D.1 of Annex 1603 of the NAFTA as set forth in 214.6(c). This documentation may consist of licenses, degrees, diplomas, certificates, or membership in professional organizations . . . Evidence of experience should consist of letters from former employers or if formerly self-employed, business records attesting to such self-employment

The job description provided by the petitioner adequately establishes that the beneficiary would be performing the duties of an engineer. Appendix 1603.D.1 to Annex 1603 of the NAFTA indicates that the profession of engineer requires a Baccalaureate or Licenciatura Degree; or state/provincial license.

The record contains documentation including a statement from the beneficiary, a copy of the beneficiary's transcripts, an evaluation of the beneficiary's education and work experience, and evidence that the beneficiary was previously granted TN-2 status.

The transcripts submitted indicate that the beneficiary completed three years of undergraduate study at the Instituto Politecnico Nacional (National Polytechnic Institute) in Mexico. There is no evidence contained in the record that the beneficiary received a degree from the institute or that she has a state/provincial license.

The Service does not wish to make light of the beneficiary's professional employment experience. It is a policy of the Service, however, that when a bachelor's or a licenciatura degree is required under TN classification, a combination of education and experience equivalent to a bachelor's degree will not be accepted. Neither the statute nor the regulations allow for the consideration of a "work equivalency" of a bachelor's degree for this nonimmigrant classification.

The director's decision does not indicate whether the prior approval of a TN-2 nonimmigrant petition on behalf of the beneficiary was reviewed. It is noted, however, that the Service is not required to approve applications or petitions where eligibility has not been demonstrated merely because of prior approvals which may have been erroneous. See, e.g. Matter of Church Scientology International, 19 I&N Dec. 593, 597 (Comm. 1988). It would be absurd to suggest that the Service or any agency must treat acknowledged errors as binding precedent. Sussex Engg. Ltd. v. Montgomery 825 F.2d 1084, 1090 (6th Cir. 1987); *cert denied* 485 U.S. 1008 (1988).

After a careful review of the entire record, it is concluded that the petitioner has not shown that the beneficiary meets the requirements for the classification sought, as defined under section 214(e) of the Act.

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.