



U.S. Citizenship
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FILE: LIN 06 008 51555 Office: NEBRASKA SERVICE CENTER Date: DEC 15 2005

IN RE: Petitioner: [Redacted]
Beneficiaries: [Redacted]

PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(ii)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(b)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

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.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The nonimmigrant visa petition was denied, in part, by the Acting Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner engages in the sale of outdoor snow-sports items. It desires to employ the beneficiaries as retail sales associates for six and one-half months. The acting director determined that the petitioner had not established that seven of the beneficiaries possessed the requisite education listed on the labor certification and denied that portion of the petition.

On appeal, the petitioner states that the education requirement was a misprint and that it does not require such education. The petitioner requests that the AAO review the beneficiaries' eligibility for the classification disregarding the four years of college education listed on the labor certification. The petitioner also submitted a letter from the Department of Labor (DOL) stating that the petitioner should have been instructed by the DOL to delete the college degree requirement since it is not necessary for this occupation.

The regulation at 8 C.F.R. 214.2(h)(6)(vi)(C) states:

Alien's qualifications. Documentation that the alien qualifies for the job offer as specified in the application for labor certification, except in petitions where the labor certification application requires no education, training, experience, or special requirements of the beneficiary.

The Application for Alien Employment Certification (Form ETA 750) at Part A indicates that the minimum amount of education, training and experience required to perform satisfactorily the job duties is four years of high school education, four years of college education, and three months of experience in the job being offered.

The only beneficiary that possessed the requisite education in the instant petition was Nicola Corner. Therefore, the petition was approved in part for this one beneficiary. However, the petitioner did not establish that the remaining seven beneficiaries named in the petition possessed the education required on the Form ETA 750, and it is for that reason, the petitioner is appealing the case.

On appeal, the petitioner states that the education requirement was a misprint. The petitioner submitted a letter from the DOL, dated November 15, 2005, stating that the petitioner should have been instructed by the DOL to delete the college degree requirement since it is not necessary for this occupation. The petitioner requests that the AAO except this letter from the DOL, as a statement from the state, saying that this was a mistake on their part.

The petition was filed on October 12, 2005. In order for the AAO to disregard the educational requirements listed on the labor certification, the petitioner would have to submit an amended labor certification reflecting the change in the educational requirement, and obtain a new labor certification reflecting the appropriate educational requirements. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998). The petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978).

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

This decision is without prejudice to the filing of a new petition accompanied by the proper documentation and fee.

ORDER: The appeal is dismissed.