



U.S. Citizenship
and Immigration
Services

(b)(6)

DATE: **JUN 19 2015**

FILE #:
PETITION RECEIPT #:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) **within 33 days of the date of this decision**. The Form I-290B web page (www.uscis.gov/i-290b) contains the latest information on fee, filing location, and other requirements. **Please do not mail any motions directly to the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (the director) denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner describes itself as a variety/department shopping center. It seeks to permanently employ the beneficiary in the United States as a purchasing manager. The petitioner requests classification of the beneficiary as an advanced degree professional pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).

At issue in this case is whether the beneficiary possesses the minimum education as required by the terms of the labor certification. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), approved by the U.S. Department of Labor (DOL).¹ The priority date of the petition is October 28, 2012.²

Part H of the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Bachelor's degree in economics/management.
- H.5. Training: None required.
- H.6. Experience in the job offered: 60 months.
- H.7. Alternate field of study: None accepted.
- H.8. Alternate combination of education and experience: None accepted.
- H.9. Foreign educational equivalent: Accepted.
- H.10. Experience in an alternate occupation: None accepted.
- H.14. Specific skills or other requirements: None.

Part J of the labor certification states that the beneficiary possesses a bachelor's degree in home economics from the [REDACTED] South Korea, completed in 1999. The record contains a copy of the beneficiary's Bachelor of Home Economics diploma from [REDACTED] issued in 2005 and transcripts from the [REDACTED] South Korea issued in 2010.³ The record does not contain an evaluation of the beneficiary's educational credentials.⁴

¹ See section 212(a)(5)(D) of the Act, 8 U.S.C. § 1182(a)(5)(D); see also 8 C.F.R. § 204.5(a)(2).

² The priority date is the date the DOL accepted the labor certification for processing. See 8 C.F.R. § 204.5(d).

³ Responsibility for administration and issuance of bachelor's degree under the examination law for self-education was transferred from [REDACTED] in 1998.

⁴ United States Citizenship and Immigration Services (USCIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. 791, 795 (Commr. 1988). However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility. USCIS may evaluate the content of the letters as to whether they support the alien's eligibility. See *id.* at 795. USCIS may give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795. See also *Matter of Soffici*, 22 I&N Dec. 158, 165 (Commr. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Commr. 1972)); *Matter of D-R-*, 25 I&N Dec. 445 (BIA 2011)(expert witness testimony may be given different weight depending on the extent of the expert's qualifications or the relevance, reliability, and probative value of the testimony).

Part K of the labor certification states that the beneficiary possesses employment experience as a purchasing manager with [REDACTED], South Korea, from February 1, 1999 until June 30, 2005. The record contains a January 25, 2011 employment certificate from [REDACTED] Rep. Director, on [REDACTED] letterhead, stating that the company employed the beneficiary as a purchasing manager from February 1, 1999 until June 20, 2005.

The director's decision denying the petition concluded that the beneficiary's Bachelor's degree in home economics did not meet the education requirements of the labor certification, as it was not in the required field of economics/management.

On appeal, the petitioner states that the beneficiary has the necessary qualifications and experience for the proffered position.

The petitioner's appeal is properly filed, timely and makes a specific allegation of error in law or fact. We conduct appellate review on a *de novo* basis.⁵ We consider all pertinent evidence in the record, including new evidence properly submitted upon appeal.⁶ A petition that fails to comply with the technical requirements of the law may be denied by us even if the director does not identify all of the grounds for denial in the initial decision.⁷

The Minimum Requirements of the Offered Position

The petitioner must establish that the beneficiary satisfied all of the educational, training, experience and any other requirements of the offered position by the priority date. 8 C.F.R. § 103.2(b)(1), (12). *See Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Act. Reg. Comm. 1977); *see also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

In evaluating the beneficiary's qualifications, USCIS must look to the job offer portion of the labor certification to determine the required qualifications for the position. USCIS may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany*, 696 F.2d at 1008; *K.R.K. Irvine, Inc.*, 699 F.2d at 1006; *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981). USCIS must examine "the language of the labor certification job requirements" in order to determine what the petitioner must demonstrate that the beneficiary has to be found qualified for the position. *Madany*, 696 F.2d at 1015. USCIS interprets the meaning of terms used to describe the requirements of a job in a labor certification by "examin[ing] the certified

⁵ *See* 5 U.S.C. 557(b) ("On appeal from or review of the initial decision, the agency has all the powers which it would have in making the initial decision except as it may limit the issues on notice or by rule."); *see also Janka v. U.S. Dept. of Transp.*, *NTSB*, 925 F.2d 1147, 1149 (9th Cir. 1991). The AAO's *de novo* authority has been long recognized by the federal courts. *See, e.g., Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004).

⁶ The submission of additional evidence on appeal is allowed by the instructions to Form I-290B, Notice of Appeal or Motion, which are incorporated into the regulations by 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

⁷ *See Spencer Enterprises, Inc. v. United States*, 229 F. Supp. 2d 1025, 1043 (E.D. Cal. 2001), *aff'd*, 345 F.3d 683 (9th Cir. 2003).

job offer *exactly* as it is completed by the prospective employer.” *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984)(emphasis added). USCIS’s interpretation of the job’s requirements, as stated on the labor certification must involve “reading and applying *the plain language* of the [labor certification]” even if the employer may have intended different requirements than those stated on the form. *Id.* at 834 (emphasis added).

In the instant case, the labor certification states that the offered position requires a bachelor’s degree in economics or management and 60 months (five years) of experience in the proffered position. No alternate field of study is accepted.

The regulation at 8 C.F.R. § 204.5(k)(3)(i) states that a petition for an advanced degree professional must be accompanied by:

- (A) An official academic record showing that the alien has a United States advanced degree or a foreign equivalent degree; or
- (B) An official academic record showing that the alien has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the alien has at least five years of progressive post-baccalaureate experience in the specialty.

In addition, the job offer portion of the labor certification must require a professional holding an advanced degree. *See* 8 C.F.R. § 204.5(k)(4)(i).

Therefore, an advanced degree professional petition must establish that the beneficiary is a member of the professions holding an advanced degree, and that the offered position requires, at a minimum, a professional holding an advanced degree. Further, an “advanced degree” is a U.S. academic or professional degree (or a foreign equivalent degree) above a baccalaureate, *or* a U.S. baccalaureate (or a foreign equivalent degree) followed by at least five years of progressive experience in the specialty.

In the instant case, the petitioner claims that the beneficiary may be classified as an advanced degree professional based on a foreign equivalent degree to a U.S. bachelor’s followed by at least five years of progressive experience in the specialty.

Evidence relating to qualifying experience must be in the form of a letter from a current or former employer and must include the name, address, and title of the writer, and a specific description of the duties performed by the beneficiary. 8 C.F.R. § 204.5(g)(1). If such evidence is unavailable, USCIS may consider other documentation relating to the beneficiary’s experience. *Id.*

While the record contains sufficient evidence that the beneficiary holds at least five years of progressive experience in the specialty, the petitioner has not established that the beneficiary has a United States baccalaureate degree or a foreign equivalent degree in economics or management. As stated above, the record contains a [redacted] bachelor’s degree diploma reflecting that the beneficiary was issued a bachelor’s degree in home economics on February 3, 1999.

According to the website for [REDACTED] Department of Home Economics, the purpose of the department is to “educate students so that they can advance into diverse professions required by the specialization of traditional family functions” and “to enable students to acquire basic theories and expertise related to the specialties of home management studies, food and nutrition studies and clothing studies.” See [REDACTED] (accessed June 10, 2015). According to the website, [REDACTED] Department of Economics’ purpose is to “distribute basic knowledge of various economics systems preceding modern capitalist societies [and] to cultivate the historical insight to discern the law of development of human societies” through students’ acquisition of “the ability to scientifically understand the principles underlying the operation of the national economy and economic problems.” Further, the Department of Management’s purpose is to provide “education of effective management theories necessary for knowledge information societies . . . increase social utility by systematizing academic theories and practices. . . supply expertise for effective operations of corporate organizations [and] . . . to cultivate talented and capable individuals equipped with a business administrative frame of thinking.” See [REDACTED] (accessed June 10, 2015). [REDACTED] Department of Home Economics is under the [REDACTED] while the Departments of Economics and Management are under the [REDACTED]

Moreover, the curricula listed by the different departments vary greatly from each other. In reviewing the beneficiary’s transcripts, the beneficiary’s courses consist of only very basic introductions to economic, accounting, finance, business administration and management principles. Whereas the curricula of the Department of Economics at [REDACTED] has in-depth courses in the various aspects of economics and finance, and the Department of Management at [REDACTED] has in-depth courses in the various aspects of management, business administration, market research and finance.

Further, the job duties of the proffered position as listed on the ETA Form 9089, Part H. 11 are:

Responsible for negotiations, acquisitions & purchases for shopping center merchandise varieties. Research & analyze market trends, style & fashions for merchandise acquisitions; compare & monitor other shop prices & style. Inspect & approve purchase payables; attend meetings & trade fairs/shows for merchandise & product purchases.

We note that nothing in the beneficiary’s coursework in home economics appears to include business “negotiations, acquisitions and purchasing,” or market research. However, the [REDACTED] Economics and Management programs do include such coursework as business economics, business analysis, marketing research, cost accounting and marketing communications management. We therefore do not find that the beneficiary’s Bachelor of Home Economics meets the field of study requirements of the labor certification.

On appeal, the petitioner contends that in advertising the proffered position it made the position opening far less restrictive to the general public by not requiring any specific major field of study. To determine whether a beneficiary is eligible for an employment based immigrant visa, USCIS must examine whether the alien’s credentials meet the requirements set forth in the labor certification. Here, the labor certification lists the specific field of study of economics/management. How the petitioner

listed the required field of study in the recruitment process does not alter the way the requirements are listed on the labor certification.

After reviewing all of the evidence in the record, we conclude that the petitioner has not established that the beneficiary possessed the minimum requirements of the offered position as set forth on the labor certification by the priority date. Accordingly, the petition must be denied for this reason.

In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.