

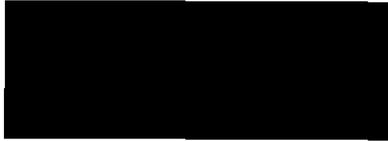
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U.S. Department of Homeland Security  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090



**U.S. Citizenship  
and Immigration  
Services**



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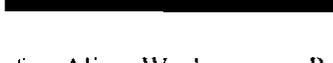
Date: **SEP 06 2012**

Office: NEBRASKA SERVICE CENTER

FILE: 

IN RE:

Petitioner: 

Beneficiary: 

PETITION: Immigrant petition for Alien Worker as a Professional pursuant to section 203(b)(3) of the  
*Immigration and Nationality Act*, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional *information that you wish to have considered*, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew

Chief, Administrative Appeals Office

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

The petitioner is an integrated marketing services business. It seeks to employ the beneficiary permanently in the United States as a senior integrated editor. The petition is accompanied by an ETA Form 9089, *Application for Permanent Employment Certification* (labor certification), approved by the Department of Labor (DOL).

The director determined that the petitioner failed to demonstrate that the job requires a professional holding at least a bachelor's degree or foreign degree equivalent; and therefore, the beneficiary cannot be found to be qualified for classification as a professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3). The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's [REDACTED] 2011 denial, the single issue in this case is whether or not the petitioner has established that the petition requires a U.S. bachelor's degree or foreign degree equivalent such that the beneficiary may be found qualified for classification as a professional.

Section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii), provides for the granting of preference classification to qualified immigrants who hold baccalaureate degrees and are members of the professions. The regulation at 8 C.F.R. 204.5(1)(2) defines "professional" as "a qualified alien who holds at least a United States baccalaureate degree or a foreign equivalent degree and who is a member of the professions."

Here, the Form I-140 was filed on [REDACTED] 2010. On Part 2.e. of the Form I-140, the petitioner indicated that it was filing the petition for a professional (at minimum, possessing a bachelor's degree or a foreign degree equivalent to a U.S. bachelor's degree).

The AAO conducts appellate review on a *de novo* basis. See *Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.<sup>1</sup> On appeal, counsel and the petitioner assert that the petitioner sought classification of the job offered as a professional having obtained a bachelor's degree, and that the beneficiary qualifies as such because she has a bachelor's degree.

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<sup>1</sup> The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations at 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).

The regulation at 8 C.F.R. § 204.5(1)(2) states in pertinent part that the job offer portion of an individual labor certification must demonstrate that the job requires a professional holding a bachelor's degree.

In this case, the job offer portion of the ETA Form 9089 indicates that the minimum level of education required for the position is a 3 year bachelor's degree. Accordingly, the minimum level of education required for the position as stated in the job offer portion of the ETA Form 9089 does not require a professional holding a bachelor's degree or the foreign equivalent of a bachelor's degree. However, the petitioner requested classification as a qualified immigrant who holds a baccalaureate degree or a foreign equivalent thereof. Section 203(b)(3)(A)(ii) of the Act, 8 U.S.C. § 1153(b)(3)(A)(ii).

Although counsel implies that the requirement of a three-year degree does not lower the requirements below a U.S. baccalaureate or foreign degree equivalent, it is clear from the terms of the ETA Form 9089 that the employer is requiring something other than a U.S. bachelor's degree or foreign equivalent degree in Part H, Question 8. The employer notes that it will accept an "other" degree (not a bachelor's), and describes this "other" degree as a three-year bachelor's degree, even though the primary education requirement at Part H, Question 4, is also a bachelor's degree. If the employer had meant to accept nothing less than a U.S. bachelor's or a foreign degree equivalent, it would not have completed Part H, Question 8, in this way. The minimum educational requirement listed on the ETA Form 9089 is a 3 year bachelor's degree, which is less than a 4 year bachelor's degree or U.S. equivalent. It is noted that there is no provision in statute or regulation that compels United States Citizenship and Immigration Services (USCIS) to re-adjudicate a petition under a different visa classification in response to a petitioner's request to do so. Also, a petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. See *Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1988).

A bachelor's degree is generally found to require four years of education. *Matter of Shah*, 17 I&N Dec. 244, 245 (Comm'r 1977). Therefore, a three year degree, as required by the petitioner as the minimum education on the ETA Form 9089, cannot be considered a foreign equivalent degree.<sup>2</sup>

The evidence submitted does not establish that the ETA Form 9089 requires a professional holding a bachelor's degree or equivalent, and the appeal must be dismissed.

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.

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<sup>2</sup> The AAO notes that three-year baccalaureate degrees are available in the U.S. However, those three-year U.S. baccalaureate programs are condensed programs and result in a degree that is equivalent to a U.S. four-year baccalaureate degree.