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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

DATE: FEB 12 2013

OFFICE: TEXAS SERVICE CENTER FILE:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(ii)

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,

  
Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Director, Texas 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 a supermarket. It seeks to employ the beneficiary permanently in the United States as a meat cutter. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification certified by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the petition requires at least two years of training or experience and, therefore, that the beneficiary cannot be found qualified for classification as a skilled worker. 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 October 19, 2011 denial, the single issue in this case is whether the petitioner has established that the petition requires a bachelor's degree or 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. Section 101(a)(32) of the Act, 8 U.S.C. § 1101(a)(32), provides that "the term 'profession' shall include but not be limited to architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." 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 nature, for which qualified workers are not available in the United States.

Here, the Form I-140 was filed on March 16, 2011. On Part 2.e. of the Form I-140, the petitioner indicated that it was filing the petition for a professional.<sup>1</sup>

In this case, the labor certification indicates that the proffered position requires completion of high school, or foreign equivalent, and twenty-four months of experience as a meat cutter. However, the petitioner requested the professional classification by checking box "e" in part 2 of the petition. Therefore, the petition only supports professional classification and not skilled worker classification.

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<sup>1</sup> When USCIS revised the I-140 petition as of January 6, 2010, it separated the professional (now box "e") and skilled worker (now box "f") categories. Previously, the two categories were combined into one box (box "e").

On appeal, counsel asserts that the director denied the petition based “solely on a minor typographical error” and that if the director had issued a Request for Additional Evidence (RFE) instead of denying the petition, the petitioner could have cured the defect. Counsel cites to 8 C.F.R. § 103.2(b)(8)(ii) to support his position, claiming that the director violated the statute in denying the petition without issuing an RFE. However, the language of § 103.2(b)(8)(ii) clearly allows the denial of an application or petition, notwithstanding any lack of required initial evidence if evidence of ineligibility is present. Neither the law nor the regulations compel the director to consider other classifications if the petition is not approvable under the classification requested, or require the director to issue an RFE where evidence of ineligibility is present. There is no provision in the statute or in the regulations that compels the Service to readjudicate a petition under a different visa classification in response to a petitioner’s request to change it, once the decision has been rendered. 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’r 1988).

The evidence submitted does not establish that the alien holds a bachelor’s degree or its equivalent and is a member of the professions. Additionally, the petitioner has not submitted evidence that the minimum of a bachelor’s degree is required for entry into the occupation such that the beneficiary may be found qualified for classification as a professional. *See* 8 C.F.R. § 204.5(I)(3)(ii)(C).

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.