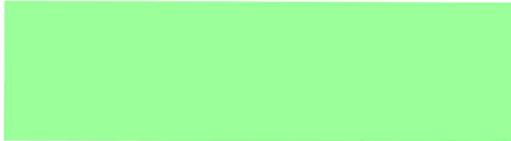




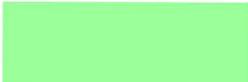
U.S. Citizenship  
and Immigration  
Services

(b)(6)



DATE: **FEB 14 2013**

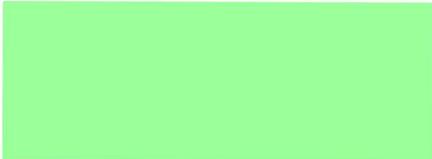
OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner:  
Beneficiary: 

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

ON BEHALF OF PETITIONER:

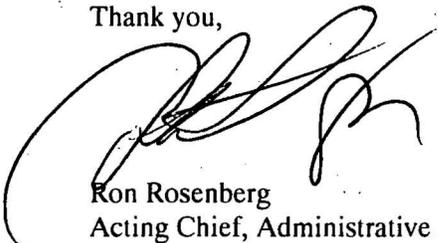


INSTRUCTIONS:

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, 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 describes its type of business as “Higher Education & Technical Training.” It seeks to employ the beneficiary permanently in the United States as an instructor. As required by statute, the petition is accompanied by labor certification application approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that the petition requires a bachelor’s degree and, therefore, the labor certification does not support the petition filed and the beneficiary cannot be found qualified for classification as a professional. 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 August 16, 2011 denial, the single issue in this case is whether or not the petitioner has established that the petition requires a bachelor’s degree 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 are capable, at the time of petitioning for classification under this paragraph, of performing labor as a professional (requiring at a minimum, possessing a bachelor’s degree or a foreign degree equivalent to a U.S. bachelor’s degree), not of a temporary nature, for which qualified workers are not available in the United States.

Here, the Form I-140 was filed on August 12, 2010. On Part 2.e. of the Form I-140, the petitioner indicated that it was filing the petition for a professional.

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 submits a brief and additional evidence asserting that a degree is common in the industry in parallel positions among similar organizations, or that the duties of the position are so complex or unique that they can be performed only by an individual with a bachelor’s degree. The petitioner asserts that an associate’s degree with six years of experience is equivalent to 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 by the regulation 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).

In this case, the job offer portion of the ETA Form 9089 indicates that the position requires a bachelor's degree in mechanical or electrical engineering. The ETA Form 9089 allows for an alternate combination of education and experience in H.8. to include an Associate's degree and six years of education. The ETA Form 9089 also requires in H.14 "Specific Skills" to include "NATE Certification in Light Commercial Refrigeration Service Technician. Strong skills in tutoring and resolution of technical problems." As H.8. allows for an alternate combination less than a bachelor's degree, the job offer portion of the ETA Form 9089 does not require a professional holding a minimum of a U.S. bachelor's degree or the foreign equivalent. However, the petitioner requested classification as a professional holding a minimum of a U.S. bachelor's degree or a foreign equivalent of a U.S. bachelor's degree. The petitioner would effectively seek to change the classification on appeal to allow a worker holding less than a U.S. bachelor's degree (an associate's degree plus six years of experience to qualify). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to United States Citizenship and Immigration Services requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm'r 1988).

In this case, the certified labor certification indicates that the duties may be performed by an individual with less than a bachelor's degree (as noted above, an associate's degree plus six years of experience). Thus, both the primary and alternate education requirements fail to state minimum qualifications to meet the standard for filing as a professional. However, the petitioner requested the professional classification on the Form I-140. There is no provision in statute or regulation that compels United States Citizenship and Immigration Services (USCIS) 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 petition requires a minimum of a U.S. bachelor's degree or a foreign equivalent such that the beneficiary may be found qualified for classification as a professional.

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.