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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

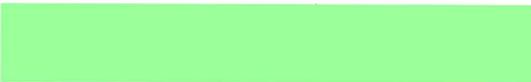


DATE: **JAN - 4 2013**

OFFICE: NEBRASKA SERVICE CENTER

FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Immigrant Petition for Alien Worker as a Professional Pursuant to Section 203(b)(3) 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,

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 is a computer services company. It seeks to employ the beneficiary permanently in the United States as a computer analyst. 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 job offer portion of the labor certification does not demonstrate that the job requires a minimum of a baccalaureate degree. 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 July 27, 2010 denial, an issue in this case is whether or not the petitioner has established that the labor certification requires a minimum of a baccalaureate 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 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."

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) states the following:

If the petition is for a professional, the petition must be accompanied by evidence that the alien holds a United States baccalaureate degree or a foreign equivalent degree and by evidence that the alien is a member of the professions. Evidence of a baccalaureate degree shall be in the form of an official college or university record showing the date the baccalaureate degree was awarded and the area of concentration of study. To show that the alien is a member of the professions, the petitioner must submit evidence that the minimum of a baccalaureate degree is required for entry into the occupation.

The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

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.¹ No additional evidence was submitted on appeal.

Here, the Form I-140 was filed on July 8, 2010. On Part 2.e. of the Form I-140, the petitioner indicated that it was filing the petition for a professional (at a minimum, possessing a bachelor's degree or foreign degree equivalent to a U.S. bachelor's degree). The director determined that the labor certification initially states that the job offered requires a bachelor's degree. However, in Section H, item 14, petitioner states that it "also accepts suitable combination of education, experience and training equivalent to a Bachelor's" and that in this context it "accepts 3 years of professional experience for each year of coursework at the Bachelor's level." The petitioner further states that it "does not require single source degrees but accepts combination of degrees/diplomas for the purpose of equivalence to Bachelor's or Master's degrees." The director determined that the job offer portion of the labor certification did not demonstrate that the job requires the minimum of a baccalaureate degree.

On appeal, counsel asserts that in Form 9089, item H(4) and item H(4-B), the petition requires a minimum of a bachelor's degree for the job offered. Counsel further asserts that in Form 9089, Item H(8), the petitioner stated that an alternate combination of education and experience is not acceptable. Counsel states that in Form 9089, item H(14), the petitioner included "boilerplate language to sidestep the U.S. Labor Department's stringent policy against restrictive job requirements. 20 C.F.R Section 656.17(h)(1)." Counsel contends that the labor certification requires a bachelor's degree and the beneficiary holds a qualifying bachelor's degree.

Pursuant to the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C), the proffered position must require a Bachelor's degree, which is the minimum required by the regulatory guidance for professional positions. The petitioner's attempt to sidestep the DOL's policy in item H(14) creates an inconsistency and ultimately lowers the minimum requirements for the proffered position to that of a combination of education, experience and training. The above regulation uses a singular description of foreign equivalent degree. Thus, the plain meaning of the regulatory language concerning the professional classification sets forth the requirement that a beneficiary must produce one degree that is determined to be the foreign equivalent of a U.S. baccalaureate degree in order to be qualified as a professional for third preference visa category purposes.

While the evidence submitted does establish that the beneficiary has a qualifying degree, the labor certification does not demonstrate that the job requires the minimum of a bachelor's degree. Accordingly, the petition cannot be approved.

¹ 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).

Beyond the decision of the director,² it is also noted that the petitioner and the beneficiary have not signed the certified ETA Form 9089 submitted with the petition. USCIS will not approve a petition unless it is supported by an original certified ETA Form 9089 that has been signed by the employer and beneficiary. *See* 20 C.F.R. § 656.17(a)(1).

The petition will be denied for the above stated reasons, with each considered as an independent and alternative basis for denial. In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.

² An application or petition that fails to comply with the technical requirements of the law may be denied by the AAO even if the Service Center does not identify all of the grounds for denial in the initial decision. *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); *see also Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004) (noting that the AAO conducts appellate review on a *de novo* basis).