



U.S. Citizenship
and Immigration
Services

(b)(6)

[Redacted]

DATE: **JUL 22 2014** OFFICE: NEBRASKA SERVICE CENTER FILE: [Redacted]

IN RE: Petitioner: [Redacted]
Beneficiary: [Redacted]

PETITION: Immigrant Petition for Alien Worker as an Other, Unskilled Worker Pursuant to § 203(b)(3)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(iii)

ON BEHALF OF PETITIONER:
[Redacted]

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements. See also 8 C.F.R. § 103.5. Do not file a motion directly with the AAO.**

Thank you,


Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, 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 clothing manufacturer. It seeks to permanently employ the beneficiary in the United States as a “CAD Operator.” Section 203(b)(3)(A)(iii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(iii), provides for the granting of preference classification to other qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing unskilled labor, not of a temporary or seasonal nature, for which qualified workers are not available in the United States.

The petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL). The priority date of the petition, which is the date the DOL accepted the labor certification for processing, is July 24, 2012. *See* 8 C.F.R. § 204.5(d).

The director’s decision denying the petition concludes that the beneficiary does not meet the educational requirements of the labor certification.

The record shows that the appeal is properly filed 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.

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

The beneficiary must meet all of the requirements of the offered position set forth on the labor certification by the priority date of the petition. 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 labor certification to determine the required qualifications for the position, U.S. Citizenship and Immigration Services (USCIS) may not ignore a term of the labor certification, nor may it impose additional requirements. *See Madany v. Smith*, 696 F.2d 1008 (D.C. Cir. 1983); *K.R.K. Irvine, Inc. v. Landon*, 699 F.2d 1006 (9th Cir. 1983); *Stewart Infra-Red Commissary of Massachusetts, Inc. v. Coomey*, 661 F.2d 1 (1st Cir. 1981).

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 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).

Where the job requirements in a labor certification are not otherwise clearly prescribed, e.g., by regulation, USCIS must examine “the language of the labor certification job requirements” in order to determine what the petitioner must demonstrate about the beneficiary’s qualifications. *Madany*, 696 F.2d at 1015. The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to “examine the certified 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].” *Id.* at 834 (emphasis added). USCIS will not look beyond the plain language of the labor certification to determine the employer’s claimed intent.

In the instant case, the labor certification states that the offered position has the following minimum requirements:

- H.4. Education: Associate’s degree in “Fashion or related field.”
- H.5. Training: None required.
- H.6. Experience in the job offered: None required.
- 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: [REDACTED]

Part J of the labor certification states that the beneficiary’s highest level of education relevant to the requested occupation is an Associate’s degree in Fashion Design from the [REDACTED], California, completed in 2010. The record contains a copy of the beneficiary’s “unofficial” transcripts from the [REDACTED] which indicates that the beneficiary received a Certificate of Achievement in Fashion Design in June 2010.

The record contains an evaluation of the beneficiary’s educational credentials by [REDACTED] for [REDACTED] dated March 24, 2014. Ms. [REDACTED] references the courses taken by the beneficiary at [REDACTED] and at [REDACTED] and concludes that the beneficiary has obtained foreign education and a U.S. diploma that is equivalent to a two-year Associate of Arts degree in Fashion Design from a regionally accredited U.S. college or university. This evaluation states the following:

This assessment is based on the placement guidelines set out by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) EDGE database as to foreign education credentials required for admission to American universities and colleges, as well as other reliable sources and independent research conducted by the office of [REDACTED] EDGE supports the above

analysis in terms of the foreign education. EDGE does not provide recommendations of U.S. degree and/or diploma and certificate programs.

On appeal, counsel for the petitioner asserts that the evaluation in the record demonstrates that the beneficiary's studies at [REDACTED] and at [REDACTED] are the foreign equivalent of a U.S. Associate's degree in Fashion Design. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. However, where an opinion is not in accord with other information or is in any way questionable, USCIS is not required to accept or may give less weight to that evidence. *Matter of Caron International*, 19 I&N Dec. 791 (Comm. 1988). See also *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). The evaluation relies upon a combination of education attained at [REDACTED] and [REDACTED]. However, the labor certification does not allow for an alternate combination of education and experience.

The record includes a copy of transcripts issued to the beneficiary by [REDACTED]. The beneficiary's transcripts indicate a program of study in mechanical engineering which does not establish that this is the equivalent of an associate's degree in fashion design from a U.S. college or university. The transcripts do not indicate that any degree was awarded, and an accompanying Certificate of Studentship states that the beneficiary is a sophomore.

The beneficiary does not possess an associate's degree or a foreign equivalent degree. The beneficiary's transcripts from the [REDACTED] do not indicate that the beneficiary was awarded an associate's degree or any degree. The record contains only unofficial transcripts which are insufficient to establish what degree or certificate the beneficiary was awarded. In addition, the beneficiary's transcripts from [REDACTED] reflect that the beneficiary studied mechanical engineering, which is unrelated to the field of fashion design. The evaluation refers to this foreign education and states that the assessment is based on guidelines set out by EDGE, but the evaluation also states that "EDGE does not provide recommendations of U.S. degree and/or diploma and certificate programs." Therefore, at issue is whether the beneficiary's education at [REDACTED] is the equivalent of an associate's degree.

The website for [REDACTED] states that it offers an Associate of Arts degree in Fashion Design as well as a Certificate of Achievement.² Even if we were to accept the beneficiary's unofficial transcripts from [REDACTED] these transcripts state that the beneficiary received a Certificate of Achievement, which is separate from an associate's degree. The website for [REDACTED] also states the requirements for these two programs as follows:³

[REDACTED]

- **An Associate in Arts Degree in Fashion Design** “may be met by completing 42 units of Required Courses and 4 units of Major Electives with a “C” or better along with general education courses meeting Plan B graduation requirements.”
 - The Plan B general education requirements include a minimum of 18 semester units. [REDACTED]
- **A Certificate of Achievement in Fashion Design** “may be earned by completing 42 units of Required Courses and 4 units of Major Electives listed under for the Associates degree in Fashion Design with a “C” or better in each course.”

The beneficiary’s unofficial transcripts indicate that the beneficiary has completed 67 credits, but only nine of these were general education courses. Accordingly, the record does not establish that the beneficiary has the equivalent of an associate’s degree from a U.S. college or university. The terms of the labor certification require an Associate’s degree in Fashion or a related field, or a foreign equivalent degree. The labor certification does not permit a lesser degree, a quantifiable amount of work experience, and/or a combination of lesser degrees, such as that possessed by the beneficiary.

Therefore, we affirm the director’s decision that the petitioner failed to establish that the beneficiary met the minimum requirements of the offered position set forth on the labor certification as of the priority date.

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.