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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: MAY 09 2014

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:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office 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,

A handwritten signature in black ink, appearing to read "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center (Director). It is now on appeal before the Chief, Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner is a financial and legal services business. It seeks to employ the beneficiary permanently in the United States as a "sales and related worker" and to classify him as a professional pursuant to section 203(b)(3)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(ii). This provision allows for preference classification to be granted to qualified immigrants who hold baccalaureate degrees and who are members of the professions. *See also* 8 C.F.R. § 204.5(l)(2).

As required by statute, the petition, Form I-140, is accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), that was approved by the United States Department of Labor (DOL).

In denying the petition, the Director noted that Section H.4 of the labor certification requires a high school degree as the minimum level of education for the proffered position, while the petition seeks a professional with a baccalaureate or foreign equivalent degree. Since the record did not establish that a baccalaureate degree is required for entry into the occupation at issue – "sales and related worker" – the Director determined that the job does not qualify as a professional position eligible for classification under section 203(b)(3)(A)(ii) of the Act. The director denied the petition accordingly.

The record shows that the appeal is properly filed and timely. 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

On appeal, the petitioner asserts that the beneficiary qualifies as a professional under section 101(a)(32) of the Act (which includes "lawyers" among the occupations listed in the definition of "profession") because he has a law degree from the [REDACTED] in Brazil.² The petitioner also claims that the beneficiary has "vast experience" in marketing and sales. As evidence of the beneficiary's education and experience the petitioner submits copies and English translations of: (a) the beneficiary's bachelor of law degree from [REDACTED] in Brazil, dated January 21, 2005; (b) a certificate issued to the beneficiary on July 13, 2007, upon completion of certain sales and marketing courses in Brazil; and (c) an unsigned resume describing 20 years of marketing and sales experience at the [REDACTED]

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).

² The record indicates that the beneficiary's law degree was actually conferred by [REDACTED] in Brazil.

The issue on appeal is whether the job at issue in this case can be classified as a professional position since the labor certification does not specify that a bachelor's degree, at the minimum, is required for the position.

As previously stated, section 203(b)(3)(A)(ii) of 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 defines the term "profession" as "includ[ing], but not limited to, architects, engineers, lawyers, physicians, surgeons, and teachers in elementary or secondary schools, colleges, academies, or seminaries." If the offered position is not listed in the foregoing statutory definition of profession, the regulation at 8 C.F.R. § 204.5(l)(3)(ii)(C) sets forth the following evidentiary requirements:

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 showing that the minimum of a baccalaureate degree is required for entry into the occupation.

The petition was filed on January 21, 2014. In Part 2 of the document – Petition Type – item 1.e. was checked which indicated that the petition was being filed for "A professional (at a minimum, possessing a bachelor's degree or a foreign equivalent to a U.S. bachelor's degree)." Thus, the petition requested professional classification as described under section 203(b)(3)(A)(ii) of the Act.

In addition, the job offer portion of the labor certification underlying the petition for a professional "must demonstrate that the job requires the minimum of a baccalaureate degree." 8 C.F.R. § 204.5(l)(3)(i).

Therefore, a petition for a professional must establish that: (1) the occupation of the offered position is listed as a profession at section 101(a)(32) of the Act or requires a bachelor's degree as a minimum for entry into the occupation; (2) the beneficiary possesses at least a U.S. bachelor's degree or a foreign equivalent degree from a college or university; and (3) the job offer portion of the labor certification requires at least a U.S. bachelor's degree or a foreign equivalent degree.

The labor certification application was filed on January 14, 2013, and certified by the DOL on January 2, 2014. In Section H of the document – Job Opportunity Information – the employer indicated that the minimum education required for the job is a high school education (item 4) and that no foreign educational equivalent is acceptable (item 9). The petitioner also indicated that no training or experience is required (items 5, 6, and 10) and that no alternate combination of education and experience is acceptable (item 8).

Thus, the ETA Form 9089 states that a high school education is the minimum level of education required for entry into the occupation of "sales and related worker." A bachelor's degree is not required by the ETA Form 9089 to qualify for the proffered position. Therefore, the educational requirement of the labor certification does not correlate with the educational requirement of the petition, which seeks to classify the beneficiary as a professional. Since the labor certification only requires a high school education for the job at issue, it does not support the petition's request for professional classification.

In accord with the Director's decision, the AAO determines that the petitioner has failed to establish that the minimum educational requirement for the "sales and related worker" position, as stated by the petitioner in the labor certification approved by the DOL, qualifies as a professional position eligible for classification under section 203(b)(3)(A)(ii) of the Act. Accordingly, the petition cannot be approved, and the appeal will be dismissed.

The burden of proof in these proceedings rests solely with the petitioner. *See* section 291 of the Act, 8 U.S.C. § 1361 (2012); *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). That burden has not been met in this case.

ORDER: The appeal is dismissed.