



U.S. Citizenship  
and Immigration  
Services

(b)(6)

[Redacted]

DATE: JUL 14 2015

FILE #: [Redacted]

PETITION RECEIPT #: [Redacted]

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

PETITION:       Immigrant Petition for Alien Worker as a Skilled Worker pursuant to section 203(b)(3)(A)(i)  
                  of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)(A)(i)

ON BEHALF OF PETITIONER:

[Redacted]

Enclosed is the non-precedent decision of the Administrative Appeals Office (AAO) for your case.

If you believe we incorrectly decided your case, you may file a motion requesting us to reconsider our decision and/or reopen the proceeding. The requirements for motions are located at 8 C.F.R. § 103.5. Motions must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. The Form I-290B web page ([www.uscis.gov/i-290b](http://www.uscis.gov/i-290b)) contains the latest information on fee, filing location, and other requirements. **Do not mail any motions directly to the AAO.**

Thank you,

  
Ron Rosenberg  
Chief, Administrative Appeals Office

**DISCUSSION:** The employment-based immigrant visa petition was initially approved by the Director, Nebraska Service Center (Director). The Director subsequently revoked the approval of the petition. The case is now on appeal before the Administrative Appeals Office (AAO). The appeal will be dismissed.

The petitioner describes itself as a global manufacturer and distributor of toner cartridges and inkjets.<sup>1</sup> On September 7, 2010 it filed the instant Form I-140, Immigrant Petition for Alien Worker, seeking to employ the beneficiary permanently in the United States as a “Senior R&D Technician” and to classify him as a skilled worker pursuant to section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i). As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification, which had been filed with the U.S. Department of Labor (DOL) on June 29, 2009, and certified by the DOL (labor certification) on April 22, 2010.

The Director approved the instant petition on November 4, 2010. On February 8, 2012, however, following a Notice of Intent to Revoke and the petitioner’s response thereto, the Director revoked the approval of the petition on the ground that the beneficiary did not meet the minimum educational requirement specified on the labor certification – namely, a high school diploma or a foreign educational equivalent. The Director cited documentation of the beneficiary’s educational record in Mexico and an evaluation report of the Foundation for International Services, Inc. indicating that the beneficiary had a combination of secondary education and technical education in auto mechanics which amounted, in sum, to the equivalent of completing the first half of eleventh grade at a U.S. high school. While the petitioner asserted that the labor certification requires only some high school education, not a full diploma, because the wording next to the box it checked in part H.4 (“Education: minimum level required”) of the ETA Form 9089 reads “High School” rather than “High School diploma,” the Director rejected this interpretation because it would necessitate a similar interpretation of the other educational levels listed in part H.4 – Associate’s, Bachelor’s, Master’s, and Doctorate – as meaning something less than a full degree. The Director concluded that the DOL’s intent in part H.4 of the ETA Form 9089 was for the employer’s box choice to indicate the minimum level of completed education that was required to qualify for the job. In response to the petitioner’s claim that its posting of the job qualifications with the state workforce agency in California reflected its intention to accept less than a full high school degree, the Director quoted language from the job posting – “Requires high school degree” – that directly contradicted this claim. Since the beneficiary did not have a U.S. high school or foreign equivalent diploma, the Director determined that he did not meet the minimum educational requirement of the ETA Form 9089 and thus did not qualify for the job offered under the terms of the labor certification.

The petitioner filed a timely appeal, along with a brief from counsel and additional documentation. We conduct appellate review on a *de novo* basis. See *Soltane v. Department of Justice*, 381 F.3d 143, 145 (3d Cir. 2004).

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<sup>1</sup> [REDACTED] is the successor-in-interest to the original petitioner – [REDACTED] – pursuant to a Bill of Sale and Assignment and Assumption Agreement dated July 18, 2014.

Section 203(b)(3)(A)(i) of the Act, 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to “[q]ualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least 2 years training or experience), not of a temporary or seasonal nature, for which qualified workers are not available in the United States.”

The regulation at 8 C.F.R. § 204.5(l)(3)(ii)(B) provides, in pertinent part, that “[i]f the petition is for a skilled worker, the petition must be accompanied by evidence that the alien meets the educational, training or experience, and any other requirements of the individual labor certification. . . . The minimum requirements for this classification are at least two years of training or experience.”

Thus, there are two elements that a beneficiary must fulfill – one statutory and the other regulatory – to qualify for classification as a skilled worker. The Act sets forth the basic requirement that the beneficiary must have at least two years of relevant training or experience. The regulation states that the beneficiary must also meet the requirements of the labor certification, which may exceed the statutory requirement of two years training or experience by including an educational requirement and/or or other requirements.

On appeal the petitioner asserts that the Director incorrectly considered the beneficiary’s educational level as a mandatory requirement for classification as a skilled worker under section 203(b)(3)(A)(i) of the Act, and ignored evidence in the record that the beneficiary had performed capably in the proffered position for over 12 years. We do not agree. The Director did not specifically address the issue of whether the beneficiary qualified for skilled worker classification under section 203(b)(3)(A)(i) of the Act, much less add an educational component to the analysis. The Director did not find that the beneficiary lacked the requisite experience to qualify for skilled worker classification under section 203(b)(3)(A)(i) of the Act. Rather, the Director found that the beneficiary did not qualify for classification as a skilled worker under the terms of 8 C.F.R. § 204.5(l)(3)(ii)(B) because he did not meet the educational requirement of the labor certification, which was over and above the basic statutory requirement of two years training or experience.

The petitioner asserts that the ETA Form 9089 is ambiguous in Part H.4 with respect to the minimum educational requirement designations, and that the Director misinterpreted the petitioner’s intent regarding the level of high school education required. We agree, as did the Director, that the plain language of Part H.4 does not specifically state that “high school” and the other educational levels listed – Associate’s, Bachelor’s, Master’s, and Doctorate – means the completion of that level of education and the receipt of a diploma or degree. However, Part H.4 is entitled “Education: minimum level required” and the other educational levels in Part H.4 clearly refer to post-secondary degrees awarded upon completing a college or university academic program. Checking the box for “Associate’s” or “Bachelor’s” or “Master’s” or “Doctorate” cannot reasonably be interpreted as meaning anything less than the completion of that level of education and the receipt of a degree. It would be inconsistent to interpret the box for “high school” differently – as meaning anything less than the completion of high school and the receipt of a diploma.

Nonetheless, the petitioner claims that its intention in designating “high school” as the minimum level of education was to require some high school education, not a high school diploma.<sup>2</sup> As evidence of its intent the petitioner once again points to its job posting of the proffered position with the [REDACTED] in February 2009 which listed “High School/GED” as the required education. According to the petitioner, its designation of GED (an acronym for General Educational Development) as an alternative educational credential showed that the educational requirement for the job of senior R&D technician is basic competence in English and mathematics, not a high school diploma. As noted by the Director in the revocation decision, however, the description of the job duties includes a requirements component that specifically states that a “high school degree” is required. The petitioner has not explained on appeal how the requirement of a high school degree can be interpreted as anything less than a complete high school education.

As further evidence of its intent regarding the minimum education required, the petitioner cites a declaration of its president, [REDACTED], dated October 19, 2011, which was submitted to the Nebraska Service Center in response to its Notice of Intent to Revoke the approval of the petition. In his declaration Mr. [REDACTED] stated as follows:

[REDACTED] did not intend, merely by checking off the box in Part H for “High School,” that the person to perform in the position of Senior Research and Development Technician could only qualify if he or she possessed a high school diploma. Our checking off of the “High School” box was intended essentially to convey that the equivalency to some level of U.S. high school education or the U.S. equivalency of some foreign high school study was required in order to perform the job.

This claim by Mr. [REDACTED] in October 2011 is directly contradicted by an earlier letter from him, dated August 25, 2010, which was submitted to the Nebraska Service Center with the I-140 petition and the certified ETA Form 9089 in September 2010. In that earlier letter Mr. [REDACTED] stated that the beneficiary had “the required educational background,” which is “a high school diploma,” and that “[t]he petitioner has indicated on the ETA 9089 that obtaining a high school diploma abroad is acceptable.” (Emphases added.) Mr. [REDACTED] letter was accompanied by a letter from his former counsel, dated September 3, 2010, which confirmed that “[p]roper performance of the job duties of Senior R&D Technician requires a High School diploma.” (Emphasis added.) Thus, the petitioner’s president and the petitioner’s counsel clearly and unambiguously stated at the time the I-140 petition was filed with U.S. Citizenship and Immigration Services (USCIS) that the minimum educational requirement for the proffered position is a high school diploma.

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<sup>2</sup> We note that Part H.4 of the ETA Form 9089 provides the option in its “Other” box of designating a minimum educational level outside of the listed categories. The petitioner could have utilized that box to specify some high school education short of graduation and a diploma.

In view of these earlier letters from Mr. [REDACTED] and his former counsel, Mr. [REDACTED] subsequent declaration that he did not intend to require a high school diploma has little or no credibility.<sup>3</sup>

In accord with the Director's decision, therefore, we conclude that the minimum educational requirement on the ETA Form 9089 is a high school diploma or a foreign educational equivalent. Since the beneficiary does not meet this minimum educational requirement, he does not qualify for the job offered and for classification as a skilled worker under the terms of the labor certification. Therefore, the petition cannot be approved and the revocation decision will remain undisturbed.<sup>4</sup>

The burden of proof in these proceedings rests solely with the petitioner. See section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER:** The appeal is dismissed. The Director's revocation decision remains intact.

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<sup>3</sup> It is incumbent upon an applicant to resolve any inconsistencies in the record by independent objective evidence. Attempts to explain or reconcile such inconsistencies will not suffice without competent evidence pointing to where the truth lies. See *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988). Doubt cast on any aspect of the applicant's evidence also reflects on the reliability of the applicant's remaining evidence. See *id.*

<sup>4</sup> We note that another I-140 petition seeking EB-2 classification for the beneficiary as an alien of exceptional ability with a national interest waiver (Receipt # [REDACTED]), after its initial denial by the Director, Nebraska Service Center, was sustained on appeal by the AAO on May 7, 2015.