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U.S. Department of Justice

Immigration and Naturalization Service

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC-00-199-52858 Office: California Service Center Date: FEB - 4 2003

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(2)

IN BEHALF OF PETITIONER:

PUBLIC COPY

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information that you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. *Id.*

Any motion must be filed with the office that originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Elizabeth Heyward

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner is a telecommunications company. It seeks to employ the beneficiary permanently in the United States as a controller pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(2). As required by statute, the petition was accompanied by certification from the Department of Labor. The director determined that the job requirements set forth on the labor certification do not require an advanced degree professional.

On appeal, counsel argues that the job requirements in section 15 of the labor certification application, Form ETA-750, were added as an "inadvertent error."

In pertinent part, section 203(b)(2) of the Act provides immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. An advanced degree is a U.S. academic or professional degree or a foreign equivalent degree above the baccalaureate level. The equivalent of an advanced degree is either a U.S. baccalaureate or foreign equivalent degree followed by at least five years of "progressive experience" in the specialty. 8 C.F.R. 204.5(k)(2).

The beneficiary's eligibility as a member of the professions with the equivalent of an advanced degree is not in dispute; the beneficiary holds a Master of Business Administration from Pacific States University. The issue is whether this particular position requires a member of the professions holding an advanced degree or its equivalent. The key to this determination is found on Form ETA-750 Part A. This section of the application for alien labor certification, "Offer of Employment," describes the terms and conditions of the job offered.

It is important that the ETA-750 be read as a whole. Block 14 on the ETA-750 Part A contained in the record contains the following information:

> Block 14 on the ETA-750 Part A contained in the record contains the following information:
>
> Education – "6"
> Major Field of Study – "Accounting or Business."
>
> Experience – "2" years as an assistant controller.

In this matter, block 15 includes the following: "*Bachelors-Business Administration & 4 yrs[.] in job or 4 yrs. Assistant Controller experience."

In denying the petition, the director stated:

> Although the petitioner claims that the position requires a master's degree in accounting or business, it is clear from the note in item fifteen that someone with

> only a baccalaureate degree in business administration and four years experience could qualify for the position.
>
> Therefore, the petitioner has not shown that the position requires an individual holding an advanced degree or an individual holding the equivalent of an advanced degree, that is, a baccalaureate degree and five years of progressive experience in the specialty.

Specifically, the director found the position did not require the equivalent of an advanced degree because section 15 indicates that a Bachelor's degree plus only four years of post-baccalaureate experience can be substituted for an advanced degree. On appeal, counsel argues that section 14 should be considered "the controlling item," that the petitioner inadvertently permitted only four years of post-baccalaureate experience instead of five, and that the petitioner's good faith effort to be more inclusive should not be considered the "actual requirement."

Counsel's arguments do not overcome the basis of the director's decision. As stated above, the labor certification must be read as a whole. It is clear that the petitioner added the bachelor's plus four years experience as an alternative to the requirements in section 14. The Service cannot discard those alternative requirements simply because they are not equivalent to the requirements in section 14. In addition, regardless of whether the petitioner committed an inadvertent error when completing the labor certification application, it is not within the Service's jurisdiction to permit amendments to a labor certification approved by the Department of Labor.[1] Finally, we will not deduce the "actual" requirements of the job offer based on the beneficiary's credentials. Rather, we must look to the requirements set forth on the labor certification, read as a whole.

The petitioner has not satisfactorily shown that this position, at a minimum, requires a professional holding the equivalent of an advanced degree.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.

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[1] Jurisdiction over amendments to the labor certification application rests with the Department of Labor (DOL). We note that the petitioner did, in fact, file an amendment to the labor certification application in April 1996 regarding the job description that DOL approved. The record contains no evidence that the petitioner similarly amended section 15 of the labor certification application with DOL.